THE

MUNICIPAL LAW

OF INDIANA,

INCLUDING

THE GENERAL SCHOOL LAW, GENERAL ELECTION LAW, TAX LAW, AND ALL STATUTES OF THE STATE APPERTAINING TO CITIES AND TOWNS; WITH NOTES OF DECISIONS, AND A COMPLETE LIST OF FORMS.

LIBRARY OF CONGRESS
LAW
DEPARTMENT,
CITY OF WASHINGTON.

BY W. W. THORNTON,

OF THE INDIANAPOLIS BAR,

AUTHOR OF STATUTORY CONSTRUCTION, JURIES AND INSTRUCTIONS, LOST WILLS, AND ONE OF THE EDITORS OF INDIANA ANNOTATED CODE, ETC.

FEB 3 1892
5388

W. H. ANDERSON & CO.

CINCINNATI, 1891.

JS451
.I63 76
1891

COPYRIGHT BY
W. H. ANDERSON & CO.
1891.

PREFACE.

THIS book occupies almost a new field in our State. Twenty years ago Wild's small work on the Municipal Corporations of Indiana was published. There are many lawyers who never saw it, and many more who have forgotten it. Indiana decisions were then small in number, and but few forms were used in that work; consequently it was little more than a compendium of the statutes. In the twenty years since its publication a multitude of decisions have been rendered by our courts, containing almost innumerable points of practice relative to municipal corporations. It has been my endeavor to gather up these points, place them in order, and to bring all the decisions of our courts down to the latest date, many of them being at the time of writing only in manuscript.

Forms have been drafted and placed under the sections to which they appertain. That this will be of great aid to municipal officers and to members of the profession the author, from his past experience, feels assured. The task of drafting them was not a small one. Many of them have stood the test of the courts.

The general school, election, and tax laws are made applicable to municipalities by statutes, and they naturally occupy a part of this volume. Here the forms have been omitted for the reason that such forms as are necessary are furnished by the State and Counties.

The school law of the State has been published for several years by the Superintendents of Public Instruction, with notes of the decisions of the Supreme Court, (many of which the writer, several years ago, prepared for that official,) and containing comments of the several officers who have held the office of Superintendent, and also those given to that officer by the Attorney-Generals of the State. These official

opinions have been retained, and due credit given to the authors of them. No opinions of the present incumbents of those two offices, or their immediate predecessors, have been used, for the reason that none of them at the time of writing had been published in an official edition of the school law.

Inquiry and experience has taught the writer that a wide divergence in the practice of officers of towns exists in this State; and such being the case, he can not help running counter to the accepted notions of practice and proceedings in some of our towns. By a careful scrutiny of the laws he has arrived at the conclusions stated in this work, and from careful study believes them to be correct, whatever may be the opinion entertained or practice followed by others. Upon these points of dispute he does not expect to pass uncriticised.

The plan adopted in this work is that followed in the Revised Statutes of 1881.

The writer is under obligations to Hon. William L. Taylor, four years City Attorney of Indianapolis, for many valuable suggestions, and for a number of approved forms; and to the author and publishers of "Coppock's Annotated Ohio Municipal Code" for a number of valuable notes.

W. W. THORNTON.

Indianapolis, Ind., September 1, 1891.

CONSTITUTIONAL PROVISIONS.

THE MUNICIPAL LAW OF INDIANA.

CHAPTER I.

CONSTITUTIONAL PROVISIONS.

ART.

1. *Bill of Rights.*
2. *Suffrage and Elections.*
4. *Legislative.*
6. *Administration.*
7. *Judicial.*
8. *Education.*
10. *Finance.*
11. *Corporations.*
13. *Municipal Debt.*
15. *Miscellaneous.*

Schedule of Constitution.

ARTICLE 1.—BILL OF RIGHTS.

SEC.

66. Compensation for service.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

SEC. 66. Compensation for service. No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

1. This section does not prohibit the seizure of a corporation's franchises for a violation of its charter, let the effect upon private property be what it may, 1 B. 267; nor the change of a county seat, 1 B. 285; even though a court-house was donated by the citizens of the place from which it is removed, 4 B. 208. (The constitution of 1816 did not require that damages be first assessed or tendered, 4 B. 505; 5 B. 384; 8 B. 246, 266.) Land may be taken for a canal; or for "hydraulic works" propelling mills and factories; or to build mills or factories, 8 B. 266; grading a street, 6 Ind. 237; vacating streets, 7 Ind. 38; building a railroad in the street, 7 Ind. 479, 522; or crossing a turnpike, 110 Ind. 5; or taking land for a railroad, 7 Ind. 711; 27 Ind. 260; or a street, 19 Ind. 326; or a turnpike, 23 Ind. 623; 26 Ind. 53; or plank-road, 26 Ind. 53; waterworks, 41 Ind. 364; telegraph line, 52 Ind. 67; for a ditch, 103 Ind. 486; for a railroad in the street, 34 Ind. 304; 74 Ind. 29; 48 Ind. 178; 7 Ind. 479; 9 Ind. 467; but this section does not apply to *consequential damages*, 6 Ind. 237 (see 9 Ind. 433); 19 Ind. 326. See § 3073, *note;* § 3170, *note;* nor to the *taxing power*, 9 Ind. 74; 29 Ind. 305; 53 Ill. 105; 57 Ill. 130; 94 Ill. 604; (but street assessments is not the taxing power, 34 Ill. 203); nor to witness fees in a criminal case, 8 Ind. 467; nor service rendered by officers in such cases, 21 Ind. 32; nor to regulation of rates for telephone companies, 105 Ind. 250; nor to laying a street railroad in the street, 78 Ind. 261.

2. Land, or materials, taken for a *public highway* is taken for the State, and need not be paid for before taking, 11 Ind. 420; but land can not be taken, even if paid for, for a *private* road, 43 Ind. 455; 25 Ia. 540; 34 Ala. 311; 39 Ill. 110; 27 Mo. 373; 24 Wis. 89; 4 Hill (N.Y.) 140.

3. This section does not prescribe the mode of ascertaining the damages or compensation to be paid, 1 Ind. 48; 62 Ill. 38. Therefore the method prescribed by an act for ascertaining damages must be followed in the way pointed out by it, 1 Ind. 285. No other can be pursued, 4 Ind. 431; and the way pointed out must be strictly followed, 7 Ind. 711; but see 9 Ind. 123; and no property can be taken except as allowed by statute, 47 Ill. 463. The time within which to apply for compensation may be limited; and if none is applied for within that time, none thereafter can be obtained, 4 Ind. 431. If no statute has been passed authorizing the assessment of damages, then the owner of land taken may sue directly for all damages he has suffered by reason of the seizure of the land, 9 Ind. 433; 7 Ind. 479. Or he may enjoin the taking, 100 Ind. 206; 23 Ind. 623.

4. An act authorizing payment in or tender of anything but legal tender is unconstitutional, 8 B. 246 (see 8 B. 337).

5. The amount of damages allowed for taking land is the value of the land taken at the time of the seizure (not at the time of the trial, 8 Ind. 74), less the amount the complainant's adjoining land had been increased in value by the location of the proposed works. He is entitled to be recompensed for all the actual injury he may sustain—all circumstances considered—by the measure of which he complains, 84 Ind. 496; 7 B. 209; 5 B. 384; 118 Ill. 206; 111 Ill. 283; 70 Ill. 347.

6. This section does not *confer* the right to take, but recognizes it, 97 Ill. 506; it limits the right, 34 Ill. 203; there is no restraint to the extent the right may be given by the legislature, so long as the property is taken for public use, 23 Ill. 202, and not private, 87 Ill. 317; 7 Ill. App. 474.

7. Until the damages are assessed according to law and paid or tendered, the title does not vest in the person procuring its condemnation, 80 Ill. 482; 7 Ill. App. 460; but damages may be paid by benefits accruing to the person damaged, 51 Ill. 63; 62 Ill. 38; 66 Ill. 510; 38 Ill. 322. 5 B. 384; 84 Ind. 496.

8. An assessment for improvements to lots on the *basis of frontage* can not be made, because of its manifest inequality, 34 Ill. 203; 40 Ill. 211; 41 Ill. 306. See 94 Ill. 604.

9. The phrase "private property" includes the right of user and enjoyment of the property, 19 Ill. App. 67. What is a "just compensation" involves the determination of a judicial question, 61 Ill. 115; 59 Ill. 286.

ADDITIONAL NOTE.

10. The particular purpose for which the power of eminent domain shall be exercised, rests entirely with the legislature, 4. O. S. 308; 98 U. S. 403; 116 Ill. 449; 58 Mo. 175. The power having been granted, the grantee is vested with the determination whether it shall be exercised, and when and to what extent, within the power, 22 Minn. 372; 116 Ill. 449. The power must be strictly pursued, (*defect in notice*), 11 O. S. 219; 34 Mich. 36; 23 W. Va. 203; (*defect in petition for*), 16 La. Ann. 393; (*proceeding by resolution instead of ordinance*), 33 N. J. L. 72; (*improper recommendation board*), 78 Mo. 41; (*insufficient designation of land*), 10 Gray, 40. Only proof of fraud, or bad faith, or that the property is intended to be used for purposes other than that for which it is appropriated, will warrant the interference of the courts, 19 O. S. 308; 4 O. S. 299. Under the principle of strict construction, where the estate taken is not defined, only such an interest can vest under proceedings as is necessary to accomplish the purpose of the appropriation, 68 N. Y. 1, 591; 10 Kas. 603; 125 Mass. 226.

11. *Streets.* A municipal corporation which has appropriated property once and neglected to take possession, may exercise the power a second time after six months, 42 O. S. 239; it may appropriate the necessary easement for a slope for a fill, but the owner is not entitled to compensation as for the fee, 34 O. S. 267. Street or highway is a public use, although wholly to afford access to church or cemetery, 33 Ind. 80; 63 Pa. St. 471; and may accommodate but one family, 22 Vt. 44; 15 Ark. 43; 5 Gratt. 265; 61 Ia. 89; 64 *Id.* 198; and may be merely a *cul-de-sac*, 12 Kas. 17; 56 Wis. 429; 87 Ill. 189; 3 Keys 35; and may be merely to accommodate pleasure-seekers; 11 Allen 530; 35 N. H. 234.

12. The following uses of streets are held to be legitimate and not to require additional compensation: *for sewers and drains*, 21 O. S. 499; 2 C. S. C. R. 462; 30 Mich. 24; 13 Allen, 146; 28 Conn. 362; *for water-pipes*, 29 Hun. 245; 27 *Id.* 72; *for gas-pipes*, 90 N. Y. at p. 161; 32 Vt. 367; *for laying subterranean wires and setting poles and stringing wires for lighting by electricity*, 65 How. Pr. 407; 18 Jones & S. 464; 51 *Ib.* 280; *Contra*, 9 Bull. 65; *for street railways*, 14 O. S. 524; 35 Cal. 325; 125 Mass. 515; *for setting poles for electric street railways*, 3 O. C. C. 425; *for cisterns for sprinkling streets and extinguishing fires*, 32 Vt. 367; *for statuary and monuments*, 2 Hun. 146.

13. The following are held to require compensation: *for telegraph and telephone lines*, 2 O. C. C. 259; 42 N. J. Eq. 141; 107 Ill. 507; 11 Abb. N. C. 440; *Contra*, 136 Mass. 75; 88 Mo. 258; *for public markets*, 15 Fla. 306; 34 N. J. L. 201; 5 Porter (Ala.) 279; *for public pounds for strays or for jail*, 15 Fla. 306; 63 N. H. 605; *for railroads*, 40 O. S. 496; 38 O. S. 41; 3 O. S. 330.

14. *Markets.* Property taken for, is for public use, 28 Hun. 515. But a street can not be used for, without compensation, 34 N. J. L. 201. Illegal erection of, may be enjoined, 29 Alb. L. J. 201; 6 Bull. 142.

15. *Parks.* A public use, 45 N. Y. 234, even though located only in the vicinity of a city or town, 58 Mo. 175. Property may be taken on side of an avenue to be kept open for ornament, 48 Barb. 9; and parks may be laid out over grounds used by a railroad, but use therefor can not be interfered with without special authority, 63 Barb. 282. General authority to lay out a railroad does not authorize its location through a park, 53 N. Y. 574; 20 Hun. 201; 16 Pick. 87.

16. *Gas-works and water-works.* A public use, 62 Cal. 182; 63 Barb. 437.

17. *School-houses and grounds.* A public use, 68 Pa. St. 170; and ground sufficient for yard may be taken, 33 Vt. 271.

18. *Cemeteries.* A public use when the right of burial is public and general, or when it is controlled by the public authorities; 20 Conn. 466; 103 Mass. 106; 46 Vt. 218; 43 Conn. 234. And it is no objection that the privilege of burial must be paid for, 53 Conn. 551. But an association can not exercise the power and vest the title in it and lot owners, as private property, 53 Conn. 551; 66 N.Y. 569.

19. *Validity of law.* An act is constitutional which provides that persons who claim damages by an appropriation of private property for public use, shall file claims for damages in a certain way within a specified time, or be held to have waived the same, 19 O.S. 173; 22 O. S. 275; 24 O. S. 467. If the statute provides that the claim shall be made in writing, the right to compensation will be deemed waived, if verbal claim only is made, 24 O. S. 467. The rule requiring the claims to be filed is not in the nature of a statute of limitations, whereby a right secured by the constitution is barred, or of a statute declaring a forfeiture, but is a declaration of a rule of evidence, by which a waiver of compensation may be established, 22 O. S. 275.

20. *Right of action.* The owner of a lot abutting upon an improvement, who files his claim as provided by law, is entitled to recover for any property actually destroyed by making the improvement, as hedges, fences, gates, and the like, 10 Rec., 705. The consequential injury to access is in the nature of a taking, and may be recovered for in Ohio, 1 O. C. C. 558. The owner may recover damages to an *unimproved* lot, if an unreasonable grade is made in front of it, 7 O. S. 469. He may recover if he has improved his lot with reference to a regularly established grade, and such grade has been changed to his injury, 15 O. 474; 18 O. 229; 7 O. S. 469; 1 Bull. 125; 12 Bull. 246; or if he has improved with reference to the grade of a public highway, as an "old road," or a "county road," or a "turnpike," and such grade is changed to his injury, 7 O. S. 469; 30 O. S. 133; 10 Rec. 705. He may likewise recover where he has improved before any grade has been established, if he anticipates a reasonable grade to which the street is built, and the grade is afterwards changed to his injury, 34 O. S. 328; or, if an unreasonable grade is established in the first instance, *Ibid.* But there can be no recovery for injury to an *unimproved* lot by the change of an existing to another reasonable grade, 7 O. S. 469; or where improvements have been made without reference to any existing grade

and a reasonable grade is established, 35 O. S. 328. Neither can he recover for a *mere* change of grade to his injury, if his lot does not abut on the improvement, 1 C. S. C. R. 154; 16 O. S. 163. The establishment of a grade by public authority is not conclusive of reasonableness, but is a fact to be considered in determining whether it is reasonable or not, 3 O. C. C. 593. Corporation, after establishing a grade, must proceed within a reasonable time to conform the street to it, or it will be held to have abandoned it, and property owner may build with reference to previous grade, and may recover damages if previous grade is changed, 3 O. C. C. 503.

21. *The measure of damages* caused by a change of grade is the diminution in value of the premises occasioned by the change—how much less valuable were the premises immediately after the change, than they were immediately before, 119 Mass. 372; 108 Mass. 60; 70 Ga. 611; 52 Ia. 303, 560; 50 Wis. 78. This may be arrived at, (1) by direct testimony as to the value before and after the change, 83 Ill., 535; 12 Ia. 437; but a witness may not give his opinion that the property has been damaged, or as to the amount of damage, 31 Wis., 512; 12 Ia., 437; 5 O. S. 573; or (2) by showing what it would necessarily cost to adjust the premises to the new grade, by grading off, 113 Mass. 111; 31 Wis., 512; by filling up, 49 Wis. 584; 50 Wis. 78; by constructing retaining, 22 Minn 527, or protecting walls, 122 Mass. 110; re-adjusting drains, 10 Rec. 705; or raising improvements, etc., 61 Ia. 187. But such items can not be recovered specifically—they are simply a means of ascertaining the loss in value, 21 Ill. App. 93; 10 Rec. 705. If a local incidental benefit be derived by means of restoration, this should be considered as an offset against damages ascertained by means of the cost of restoration, 10 Rec. 705. Extra expense in business during the progress of an improvement, such as storage and drayage, and extra labor, do not tend to prove diminution in value, and can not be shown, 12 Bull. 247. If the owner is not allowed damages by the jury, his only remedy is by error, or appeal; he can not enjoin the improvement, 31 O. S. 621; 12 Kas. 17; 82 Ind. 24; 7 Ia. 416.

22. *Rights of action not covered by the statute.* If the corporation constructs an elevated viaduct in a street which occupies the greater part thereof, whereby the premises of an owner who abuts the street, but not the viaduct, are damaged, such owner may recover for the injury, 43 O. S. 190. Such person is not an owner of a lot "bounding or abutting upon the proposed improvement," and is not required to file a claim for damages under a statute requiring such an owner to file a claim for them, *Ibid.* The laying of a street railway so near the sidewalk as to obstruct the convenient access to an improvement made with reference to the grade of a highway, is an injury for which compensation must be made, 14 O. S. 163. And although the owner has access to the part of the street immediately in front of his premises, he will be entitled to damages if he is obstructed in his passage from that part, to the portion traveled by the public by an elevated trestle, 8 Bull. 15. An owner whose lot does not abut upon a street which is being graded may recover damages to his *land* by removal of the lateral support in grading such street, 38 O. S. 141; and he may recover for damages to *buildings*, or other artificial structures, if the work be done negligently, 38 O. S. 141; 8 Bull. 25; 21 O. S. 499.

23. Where a statute provides for the assessment of damages when the parties can not agree, an attempt to agree is a condition precedent to the exercise of the power of appropriation, 28 Cal. 662; 29 Mich. 77; 32 Mich. 283; 47 Mo. 474, 479; 36 N. J. L. 499; and inability to agree must be alleged and proven, 33 O. S. 429. For what is a sufficient attempt to agree, see 53 Mich 442; 5 W. Va. 382; 82 N. Y. 196; 67 N. Y. 37. If property is owned by persons under a disability who can not agree, no attempt need be made, 20 Ind. 9; 103 Mass. 106. Construction of a railroad in a street before right to construct has been acquired from adjoining property owners, may be enjoined by such owners, 38 O. S. 41; and it is immaterial whether the fee of the street is in the city or in the abutting owners, *Id.* There can be no recovery from the municipality for permitting the use of the street for railway purposes, 41 O. S. 207. In an action by the adjoining owner for damages, he is entitled to recover full compensation for the depreciation in the value of his property, 45 O. S. 309; 40 O. S. 496; 35 O. S. 284; 33 O. S. 429. And when such compensation is made, he will be estopped to deny that

the occupation is without his consent, 12 Bull. 214; 21 Fed. Rep. 309. The measure of damages in such action is the difference in value of the property affected, before and after the location of the road, 45 O. S. 309; and upon this question testimony as to injury from smoke, noise, and sparks is competent, *Id.*; but testimony as to diminution of rents, and opinions as to amount of damages, and as to "the difference in value of the property with the track in the street and if it was some other place" is incompetent, 33 O. S. 439; 45 O. S. 309.

ARTICLE 2—SUFFRAGE AND ELECTIONS.

SEC.
83. Elections free.
84. Qualifications of electors.
85. Soldiers—Seamen—Marines.
86. Residence.
87. Bribery a disqualification for office.
88. Challenge to duel.
89. Disfranchisement.
90. Effect of holding lucrative offices.
91. Defaulters not eligible.
92. *Pro tempore* appointments.
93. Electors free from arrest.
94. Method of election.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

SEC. 83. Elections free. 1. All elections shall be free and equal.

SEC. 84. Qualifications of electors. 2. In all elections not otherwise provided for by this constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the State during the six months and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law. [As amended March 14, 1881.]

Previous to 1881 a law requiring a twenty days' residence and registration was declared unconstitutional, 35 Ind. 485; 39 Ind. 598. A registry law must be applicable to all classes of electors, 125 Ind. 281.

SEC. 85. Soldiers — Seamen — Marines. 3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine have the right to vote.

See § 4682.

SEC. 86. Residence. 4. No person shall be deemed to have lost his residence in the State by reason of his absence, either on business of this State or of the United States.

See § 4683.

5. [Abrogated March 14, 1881.]

Sec. 87. Bribery a disqualification for office. 6. Every person shall be disqualified for holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to secure his election.

Sec. 88. Challenge to duel. 7. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

Sec. 89. Disfranchisement. 8. The general assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

See § 4681.

Sec. 90. Effect of holding lucrative offices. 9. No person holding a lucrative office or appointment under the United States, or under this State, shall be eligible to a seat in the general assembly; nor shall any person hold more than one lucrative office at the same time, except as by this constitution expressly permitted: *Provided*, That officers in the militia, to which there is attached no annual salary, and the office of deputy postmaster, where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative; *And provided, also*, That counties containing less than one thousand polls may confer the office of clerk, recorder, and auditor, or any two of said offices, upon the same person.

An office to which there is attached a compensation for services rendered is a lucrative office, 44 Ind. 401; S. C. 15 Am. R. 239. Its lucrativeness does not depend upon the amount of compensation affixed to it, 8 B. 329. The following offices have been held to be lucrative offices, viz.: reporter of the supreme court, 19 Ind. 351; recorder and commissioner of a county, 8 B. 329; township trustee and postmaster, 105 Ind. 221; township road supervisor, 14 Ind. 182; major (20 Ind. 103) and colonel in the volunteer service of the United States—such offices are not offices in the militia, 19 Ind. 351; and mayor of a city and director of a state prison of this State, 35 Ind. 111. This section does not apply to a councilman of a city, so as to prevent him holding another office, 44 Ind. 401; S.C. 15 Am. R. 239; nor to a member of a committee of the legislature, authorized to sit after adjournment and audit claims, receiving a per diem pay while so auditing them, 16 Ind. 497; nor prohibit the president of the board of trustees for the hospital for the insane, the asylum for the blind, and the institution for the education of the deaf and dumb, drawing a salary as such president and another salary as trustee of such three several institutes, 116 Ind. 300. If an officer who holds a lucrative office accepts another lucrative office under the laws of the State, such act of acceptance is a vacation of itself of the first office, 8 B. 329; 14 Ind. 182; 16 Ind. 368; 19 Ind. 351; 20 Ind. 103, 35 Ind. 111; 56 N. H. 220; 96 Ill. 420; 64 Me. 195; 77 Va. 328; except where such prior office is one held under the Federal Government, in which event the incumbent must resign it if he desires to retain the state office, 105 Ind. 221; S. C. 55 Am. R. 197; 15 Cal. 117. See 11 R. I. 638; S.C. 23 Am. R. 538; 53 Tex. 387; 67 N. Y. 456; 3 Nev. 566.

See § 159. The office of school trustee of a city or town is a lucrative office, and a person holding it can not be a trustee of the deaf and dumb institute. 26 N. E. Rep. 893.

Sec. 91. Defaulters not eligible. 10. No person who may hereafter be a collector or holder of public moneys shall be eligible to any office of trust or profit until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

The disqualification must exist at the time the term of office begins, the right of the claimant not being effected by the fact that at the time of his election he was ineligible. The action to test his right to the office can not be brought before the term of office begins, 122 Ind. 113; 90 Ind. 294; 107 Ind. 374.

Sec. 92. Pro tempore appointments. 11. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

Sec. 93. Electors free from arrest. 12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

See § 4684.

Sec. 94. Method of election. 13. All elections by the people shall be by ballot; and all elections by the general assembly, or by either branch thereof, shall be *viva voce*.

ARTICLE 4.—LEGISLATIVE.

SEC.
118. Local laws forbidden.
SEC.
119. Laws must be general.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

Sec. 118. Local laws forbidden. 22. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and of constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening, and working on, highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys, and public squares;

Summoning and impaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers, and their compensation;

For the assessment and collection of taxes for state, county, township, or road purposes;

Providing for supporting common schools and for the preservation of school funds;

In relation to fees or salaries; except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required. [As amended March 14, 1881.]

In relation to interest on money;

Providing for opening and conducting elections of state, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

Sec. 119. Laws must be general. 23. In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

See § 212, *note* 2. The only clause of § 118 that applies to cities is the following: "Vacating roads, town plats, streets, alleys, and public squares." When a statute, not falling under § 118, falls under § 119, it is for the legislature and not the courts to determine whether it violates the latter section, 118 Ind. 426; 111 Ind. 152; and although a law passed may apply, by reason of its limitation to cities of a certain size, to only one city in the State, yet it is valid and not void as violating the above two sections, 118 Ind. 426; 111 Ind. 152; so a law is valid which applies only to cities acting under a special charter, 30 Ia. 232; 37 Ia. 462. Legalizing taxes not authorized by charter was held invalid in Iowa, 60 Ia. 500; 62 Ia. 303. See 39 Ia. 112.

ARTICLE 6.—ADMINISTRATION.

SEC.
156. Residence of city or town officers.
158. Impeachment of county officers.
159. Vacancies, how filled.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

Sec. 156. Residence of city or town officers. 6. All county, township, and town officers shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties as may be directed by law.

1. This section applies both to town and city officers; the word "town" is generic and comprehends cities, 118 Ind. 449, 462; 24 Ind. 286; 119 Ind. 481. 484.

2. A city or town officer must reside in the town or city in which he holds his office at the time of his election or appointment; and if, during his term, he ceases to reside in the town or city, he thereby abandons and forfeits his office. Having once abandoned the office by ceasing to reside in such town or city, he can not afterwards resume it (4 B. 116; 21 Ind. 516; S. C. 83 Am. D. 367.) If an officer leaves his place of residence temporarily, on business or otherwise, but with the intention of returning, he does not thereby lose or change his residence, nor abandon his office. In such an instance there is no intention to lose or change his residence, which intention is essential in order to make his absence have that effect. Going to Washington, D. C., and procuring an appointment as assistant doorkeeper of the House of Representatives, but leaving a

deputy in charge of his office, his family at his place of residence, returning during the adjournment of Congress and superintending the business of his office, paying his poll tax, voting and claiming his residence thereat was held not to amount to abandonment of his residence. Appointing a deputy and leaving the office in his charge, is not alone such a non-user or mis-user as to work a forfeiture of the office by the person holding it. The general rule is that where a man is at the head of a family and is a house-keeper, it will be presumed that the residence of his family is his own residence. A mere intention to change his residence without an actual removal, is not sufficient to effect a change, 27 Ind. 236; 17 Fla. 389; 50 Ark. 266; S. C. 7 S. W. Rep. 161. A student, merely because he is going to a college, does not acquire a residence there because of that fact, 113 Ind. 148; 76 Me. 148; S. C. 49 Am. R. 606; 10 Mass. 488; 5 Met. 589; 71 Pa. St. 302; S. C. 10 Am. R. 698; 53 Ia. 246, S. C. 36 Am. R. 216. Aside from this section of the constitution, an officer may *abandon* his office, or by parol may *resign* it, and the existence of a vacancy in either case will depend upon all the facts and circumstances. Voluntarily going into the army was held to be an abandonment of the office of auditor of a county; and an act of the legislature permitting an officer to enlist in the army and to retain his office was held unconstitutional, 21 Ind. 516; S. C. 83 Am. D. 367. A mere temporary absence from the State to procure medical treatment, 33 La. Ann. 870; or to engage in business for a limited time, 8 Bush (Ky.) 560; 17 Neb. 598; or on pleasure, 26 La. Ann. 568; S. C. 21 Am. R. 551; 3 Neb. 409, S. C. 19 Am. R. 634, will not amount to an abandonment.

3. The legislature can not authorize any town or city officer, except the mayor, to exercise *judicial power*, 106 Ind. 345, 357.

Sec. 158. Impeachment of county officers. 8. All state, county, township, and town officers may be impeached or removed from office, in such manner, as may be prescribed by law.

See §§ 3101, 3278. This section applies to officers of a city, 118 Ind. 449, 462; 24 Ind. 286; 119 Ind. 481, 484. It is the duty of the legislature to make provision for the removal, for just cause, of all town and city officers. Such an officer can only be removed for some specified neglect or violation of duty imposed or defined by law, 119 Ind. 481, 484.

Sec. 159. Vacancies, how filled. 9. Vacancies in county, township and town offices shall be filled in such manner as may be prescribed by law.

This section applies to cities, the word "town" being generic, 118 Ind. 449, 462; 119 Ind. 481, 484; 24 Ind. 286. For vacancies in city offices see § 3050; alderman, § 3053; councilman, § 3043; town offices, § 3312; town marshal, § 3326; school trustees, § 4439.

ARTICLE 7—JUDICIAL.

SEC.
175. Conservators of the peace.
176. Ineligibility of judges and mayors to other offices.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

Sec. 175. Conservators of the peace. All judicial officers shall be conservators of the peace in their respective jurisdictions.

This section applies to the mayor of a city. See § 3062.

Sec. 176. Ineligibility of judges and mayors to other offices. 16. No person elected to any judicial office shall, during the term for which he shall have been elected, be eligible to any office of trust or profit under the State, other than a judicial office.

The mayor of a city being a judicial officer can not be elected to and accept during his official term the office of director of our state penitentiary, 35 Ind. 111; nor the office of clerk of the circuit court, 14 Ind. 93; nor sheriff of the county, 12 Ind. 570. But he may be elected to a non-judicial office during his term, if the term of the office to which he is so elected commences after his term as mayor expires, 90 Ind. 294; 107 Ind. 374; 122 Ind. 113; but if his term of office as mayor expires the same day the term office to which he is elected begins, the election is void, 107 Ind. 374. A person elected mayor, who does not accept the office, may, during the time for which he was elected, be elected to and accept a non-judicial office, 90 Ind. 294. A mayor can not resign his office and then accept and hold, during the remainder of his term, a non-judicial office, 15 Cal. 117; 3 Nev. 566. Votes cast for a mayor for a non-judicial office are void and can not be counted in order to defeat his opponent. In such an instance, if his opponent is the only candidate against him and receives any votes whatever, he is elected, although such mayor receive a majority of all the votes cast, 107 Ind. 374; 100 Ind. 489; 81 Ind. 558; 35 Ind. 111; 15 Ind. 327; 14 Ind. 93; 12 Ind. 569. One holding the office of a justice of the peace may resign and accept the office of clerk of a city or town during the time for which he was elected such justice, 52 Ind. 599.

ARTICLE 8—EDUCATION.

SEC.
182. Common schools.
183. Common school fund.
184. Principal, a perpetual fund.
185. Investment and distribution.
186. Re-investment.
187. Counties—Liability.
188. Trust funds inviolate.
189. Superintendent of Public Instruction.

[R. S. 1852, p. 33. In force November 1, 1851.]

SEC. 182. Common schools. 1. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government, it shall be the duty of the general assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement, and to provide, by law, for a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all.

1. See § 4325, *notes*. *Schools a state institution.* Under our former constitution we had had two systems of common schools, the general and the local, and the local had broken down the general system, and neither had flourished. This was an evil distinctly in the view of the convention which framed the new constitution, and it was determined that the two systems should no longer coexist; that the one general system should continue, strengthened by additional aids, and that the counteracting local system should go out of existence. * * Common schools as a whole are made a state institution—a system co-extensive with the State, embracing within it every citizen, every foot of territory, and all the taxable property of the State, 10 Ind. 76 and 77; 5 Ind. 557.

2. *General.* Our common school system must be general, that is, it must extend over and embrace every portion of the State, 48 Ind. 358.

3. *Uniform.* It must be uniform. This will be secured when all the schools of the same grade have the same system of government and discipline, the same branches of learning taught, and the same qualifications for admission, *Id.* 359.

4. *Classification.* The schools must be equally open to all. But the legislature may classify the pupils to be admitted, with reference to age, sex, advancement, and branches of study to be pursued; and may designate to what schools and what school-houses the different ages, sexes, and degrees of proficiency shall be assigned, *Id.* 360.

5. *Colored pupils.* To require the white and colored children to be taught separately, provision being made for their education in the same branches, according to age, capacity, or advancement, with capable teachers, does not

amount to a denial of equal privileges to either, or conflict with the open character of the system required by the constitution, *Id.* 362. See § 4496.

6. This section does not require the legislature to levy all school taxes, nor prohibit it from providing by a general law, for the levying of school taxes by the local school authorities, 102 Ind. 307.

7. *Legislative power.* The legislature is given full power under this section to provide for a general and uniform system of common schools, and such power necessarily resides in it, although it is not given by the constitution. It may prescribe the course of study and the system of instruction that shall be pursued and adopted, as well as the *books* which shall be used, 122 Ind. 462.

Sec. 183. Common school fund. 2. The common school fund shall consist of the congressional township fund, and the lands belonging thereto;

The surplus revenue fund;

The Saline fund, and the lands belonging thereto;

The bank tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county seminaries, and the moneys and property heretofore held for such seminaries; from the fines assessed for breaches of the penal laws of the State, and from all forfeitures which may accrue;

All lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance;

All lands that have been or may hereafter be granted to the State when no special purpose is expressed in the grant, and the proceeds of the sales thereof, including the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress of the twenty-eighth of September, one thousand eight hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations that may be assessed by the general assembly for common school purposes.

1. See § 4325. *Consolidation void.* In so far as this section attempts to consolidate the congressional township fund with other funds, it is inoperative. The provisions of the school law of 1852, which were designed in pursuance of this section to effect such consolidation are in contravention of the subsequent section 7, and of the congressional grant to the townships, 6 Ind. 83; 94 U. S. 792.

2. *Sale of seminaries void.* The provision authorizing the sale of county seminaries is void as impairing the obligation of contracts, 19 Ind. 407; 20 Ind. 398.

3. *Penalties.* The fact that a penalty under § 6339 for making a *false tax list* is to be paid into the county treasury for the use of the county does not bring the statute into conflict with this section of the constitution, as such penalty is not a fine in the sense of the word as there used, 108 Ind. 132. So the statute turning over certain fines assessed for immorality to the *home for friendless women* is valid, § 6243; 50 Ind. 215.

4. *Escheated real estate—Estrays.* Under this section it is "the fund to be derived from the sale of *escheated real estate*," and not such real estate itself, which becomes a part of the common school fund, 63 Ind. 33. So money arising from the sale of *estrays* and *property* taken *adrift* belongs to the school fund by force of the act of 1844, p. 86, and R. S. 1881, § 235; 92 Ind. 353, § 4325*a*.

5. See § 4325, *notes*.

Sec. 184. Principal, a perpetual fund. 3. The principal of the common school fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever.

Note. See § 187. Not a penny of the principal of the school fund can be used for any purpose, 120 Ind. 282. Therefore a statute making the statement of the county auditors as to the amount of school funds held in trust by their respective counties, when approved by the superintendent of public instruction, "conclusive evidence of the facts therein contained," is unconstitutional, 120 Ind. 282.

Sec. 185. Investment and distribution. 4. The general assembly shall invest, in some safe and profitable manner, all such portions of the common school fund as have not heretofore been intrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.

The word "invest" is construed as broad enough to cover loans made by the counties, and that the fund may be intrusted to them for that purpose; and yet, while covering the loan of money, it does not restrict to that mode of investment, 37 Ind. 122.

Sec. 186. Re-investment. 5. If any county shall fail to demand its proportion of such interest for common school purposes, the same shall be re-invested for the benefit of such county.

Sec. 187. Counties—Liability. 6. The several counties shall be held liable for the preservation of so much of said fund as may be entrusted to them, and for the payment of the annual interest thereon.

1. *Rents.* A county is liable for rents derived from unsold congressional township land, 44 Ind. 38.

2. *Action.* An action may be sustained in the name of the State on the relation of the board of county commissioners, to recover rents received by a township trustee for the lease of unsold school lands belonging to the 16th section, and not paid by such trustee into the county treasury, 44 Ind. 38; 94 U. S. 792. And the trustee is liable on his *official bond*, with ten per cent. damages, *Id.*

3. *Object.* Money derived from the rent of unsold school lands belonging to the 16th section is to be paid into the county treasury, to insure its just and equitable distribution to the inhabitants of the congressional township in which such section lies, 44 Ind. 38.

4. *Policy of law.* It is the policy of the school law that all school funds are to be distributed to the beneficiaries thereof through and from the county treasury to the proper officers of the various school corporations, cities, towns, and school townships, 44 Ind. 38.

5. See § 4326, *notes.*

Sec. 188. Trust funds inviolate. 7. All trust funds held by the State shall remain inviolate, and be faithfully and exclusively applied to the purposes for which the trust was created.

1. *Expense.* The constitution requires the counties to bear the *expense of managing* the school fund, 103 Ind. 497; 65 Ind. 176, 184; 90 Ind. 359; 116 Ind. 329.

2. *Action.* An *action* lies *against a county* for money paid out of the school fund to the officers for managing such funds, 103 Ind. 497.

3. *Settlement.* The *settlement* between the board of commissioners and a county auditor, or other county officer, does not conclude the State from maintaining an action to recover school funds unlawfully paid to an officer by the board, 103 Ind. 497; 106 Ind. 270; 116 Ind. 329, 531.

4. *Statute of limitations.* The county in receiving and disbursing the school fund acts as the trustee of a direct trust, and against such a trust the defence of the *statute of limitations* cannot be interposed, 103 Ind. 497; 106 Ind. 270.

5. *Counsel.* A county may legally *employ counsel* to protect its funds, but it must pay him out of the general county fund and not out of the school fund, 116 Ind. 329.

6. *Grant was a contract.* The *sixteenth section* in the several congressional townships of this State was granted by Congress to the inhabitants of such townships respectively, for the use of the schools therein and not elsewhere; and the grant was accepted by the State on the terms in which it was made. By the sale of such section in such townships under the act of Congress of 1828, the proceeds became a *trust fund*, to be applied for the use of schools in such townships respectively, and not elsewhere. The fact that at the time of the grant there were no inhabitants in the township does not change the rule or result, nor can a repeal by the legislature of the act creating congressional townships affect the validity of the grant by Congress of such section in those townships to the inhabitants for the use of schools therein, nor give the State any better right than it otherwise would have had to divert the funds derived from the sale of such section. The grant was a *contract* executed and incapable of revocation by the legislature. The school *law of 1852*, so far as it diverted the proceeds of the sale of the sixteenth section in the several congressional townships from the use of schools in such townships respectively to the use of the school system of the State at large, was held unconstitutional, 6 Ind. 83; 7 Ind. 570, 636; 22 How. 56; but the school *law of 1855* was held valid, 7 Ind. 570, 630.

Sec. 189. Superintendent of public instruction. 8. The general assembly shall provide for the election, by the voters of the State, of a state superintendent of public instruction, who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

See § 4406.

ARTICLE 10—FINANCE.

SEC.
193. Assessment and taxation.
SEC.
198. State can not assume city or town's indebtedness.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

Sec. 193. Assessment and taxation. 1. The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

See § 6269, *notes*.

Sec. 198. State can not assume city or town's indebtedness. 6. No county shall subscribe for stock in any incorporated company,

unless the same be paid for at the time of such subscription, nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company; nor shall the general assembly ever, on behalf of the State, assume the debts of any county, city, town, or township, nor of any corporation whatever.

The legislature may authorize a city or town (or township, 94 Ind. 13; 65 Ind. 457) to subscribe for stock in an incorporated company of a public nature (as a railroad, 34 Ind. 185) upon credit, and to borrow money to pay for the same, 9 Ind. 74. Unless expressly authorized by a statute, a city or town can not subscribe for stock, 22 Ind. 88, 508; 51 Ind. 325; 32 Ind. 244. 1 Dill. Munp. Corp. § 161. See § 3152, *notes*.

ARTICLE 11—CORPORATIONS.

SEC.
212. General laws.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

SEC. 212. General laws. 13. Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

1. See §§ 118, 119. The word "corporations" applies to cities and towns; and the legislature can not now incorporate a town or city, nor pass an act for the incorporation for a particular town; but it may modify the charter of a town or city granted previous to the adoption of the present constitution, 106 Ind. 129, 131. This power is expressly reserved by the constitution. § 235, clause 4.

2. The constitution of Ohio [Art. 13, § 6] provides that "the general assembly shall provide for the organization of cities and incorporated villages, by general laws." * * * The general assembly, assuming to act under this provision, passed an act dividing all cities "into two classes, first and second," and provided that "cities of the first class are divided into three grades—first, second, and third; cities of the second class are divided into four grades—first, second, third, and fourth." [Smith & Benedict's Rev. Stat. of Ohio, 1890, § 1546.] This classification was held valid, and not in conflict with the clause of the constitution quoted, 29 O. S. 102; 31 O. S., 592; 39 O. S. 653; 44 O. S. 137, 247. Of this clause of the constitution a writer of that State has said: "The difficulty of legislation according to classification is found in avoiding the restrictions of Art. 13, § 1, and Art. 2, § 26. The test as to whether an act is a special act, conferring corporate power, within the inhibition of Art. 13, § 1, is found in the potentially general quality of its provisions. If at the time of its passage it applies to all the corporations in the class for which it legislates, and in the future any other corporation which may lawfully come into that class can have the benefits of its provisions, it is not special, although at the time of its passage but one corporation is in the specified class, 34 O. S. 228; 39 O. S. 653; 41 O. S. 476; 43 O. S. 98; 44 O. S. 98; *Id.* 137; *Id.* 247. An act may be made special by designating a corporation by name, 8 Neb. 178, or the number of inhabitants at a specified census, or other time, 29 O. S. 102; 31 O. S. 592; 42 O. S. 437; 44 O. S. 247; or by containing stipulations which only one corporation can perform within a time designated, 43 O. S. 98; or by providing for issue of bonds to pay *existing* deficiencies in class where there is but one city, 13 Bull. 614; or by extending powers of existing corporation over other contiguous corporations or territory, 20 O. S. 18. But an act conferring power which would be corporate power, if conferred on a corporation, is not special legislation, if power is conferred on a board which is not a corporation, (*Trustees of Southern Railway*) 21 O. S. 14; (*Board of Hospital Trustees*) 23 O. S. 434; (*Trustees of Sinking Fund*) 42 O. S. 437; (*Board of Police Commissioners appointed by Governor or Court*) 29 O. S. 102; 38 O. S. 455. The test of a law of a general nature

which shall have a uniform operation throughout the State as required by Art. 2, § 26, of the constitution, has not been definitely fixed by the supreme court, 34 O. S. 238. The character of its subject matter, whether all the citizens of the State have therein a common interest, has been suggested as controlling, 6 O. S. 269; but this has been thought insufficient, as subjects of general interest may have peculiar local application, 34 O. S. 228; and when they have, laws of a general nature may be constitutionally passed which, under proper classification, have only a local effect. An act relating to a specified class *may* be one of a general nature, (*Cincinnati Police Act*) 29 O. S. 102; 44 O. S. 137; 38 O. S. 455; (*Cincinnati Granite Pavement Act*) 14 Bull. 87, affirmed in S. C. without report; (*Section 11 of Dow Law*) 2 O. C. C. R. 168; 20 O. S. 308. And it may *not*, 42 O. S. 628."

3. For our own State, see 118 Ind. 426, and 111 Ind. 152. See also 41 O. S. 481.

ARTICLE 13—MUNICIPAL DEBT.

SEC.
220. Limited—Excess void.

[Acts 1881, p. 29. Took effect March 14, 1881.]

SEC. 220. Limited—Excess void. 1. No political or municipal corporation in this State shall ever become indebted, in any manner or for any purpose, to an amount, in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporation, shall be void: *Provided*, That in time of war, foreign invasion, or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense to such an amount as may be requested in such petition. [Amendment, in lieu of four old sections. Adopted March 14, 1881.]

1. The *four old sections* related to negroes and mulatoes, which were annulled by the 13th, 14th, and 15th amendments to the Federal Constitution.

2. This amendment probably *took effect* March 14, 1881, at 6 p. m., when the poles were closed, 104 U. S. 469, S. C. 3 Morrison's Transcript, 407; 105 U. S. 1; 62 Ill. 321; 66 Ill. 73; 88 Ill. 302; 2 Hughes (U. S.), 183, S. C. 10 Nat. Bank Reg. 1, 13 Am. L. Reg. 624; 4 Baxt. (Tenn.) 232; 35 Tex. 752.

3. If a city or town is *indebted in an amount equal to two percentum* of its taxable property, it can not issue an order on its treasury for *current expenses* if there are no funds in it which can be applied to the payment of the order; and it may be enjoined from issuing such an order when about to issue it, if no provision has been made for its payment, 88 Ind. 473, S. C. 45 Am. R. 467. Any tax-payer of the city or town may bring the action, 97 Ind. 1, S. C. 49 Am. R. 416; 64 Geo. 286. But if the current revenues are sufficient to discharge all current expenses without increasing the indebtedness, no corporate debt is incurred for such expenses, 97 Ind. 1. The word "indebtedness," as used in this section, means "an agreement of some kind by the city (or town) to pay money where no suitable provision has been made for the prompt discharge of the obligation imposed by the agreement, 88 Ind. 473, S. C. 45 Am. R. 467. Consequently, this section of the constitution does not apply to *water* to be paid for as the water is furnished, if the contract price can be paid from the current revenues as the water is furnished, without increasing the corporate indebtedness beyond the constitutional limit, or encroaching upon the funds set apart to

other purposes. The items of expense essential to the maintenance of corporate existence, such as *light*, *water*, *labor*, and the like, constitute current expenses, payable out of current revenues, 97 Ind. 1, S. C. 49 Am. R. 416; 98 Ill. 415; 27 Ia. 227; 36 Ia. 396; 42 Ia. 614; 49 Ia. 58 (see 51 Ia. 385); 64 Ga. 498 (expenses of a jail.) It is otherwise decided in Illinois, 84 Ill. 626; 105 Ill. 138, 215; 87 Ill. 385; 89 Ill. 282, 296; 59 Mich. 311, S. C. 11 Am. & Eng. Corp. 299. This section does not prevent a city or town from issuing *new bonds, with coupons* for future interest, for the purpose of *funding* debts, with accrued interest, existing prior to its adoption, *viz.*, March 14, 1881, 107 Ind. 106. It in no way effects *past indebtedness*, 107 Ind. 106; 34 Ia. 208. Its only effect upon §§ 3230 and 3231 is to limit their application to debts contracted prior to March 14, 1881, and to such as have been since incurred, not in excess of the two percentum limit upon the value of their taxable property, 107 Ind. 106. Bonds in *excess of the amount allowed* by this provision issued to build necessary school-houses are void, 67 Tex. 519; so in Georgia to buy a *fire engine*, or to pay the difference between a new and old one, 64 Ga. 286; so in the same State, a *safe*, 64 Ga. 498. A contract for the *erection of a building* at a specified price, to be completed at a certain date, payment for which is to be made as the work progresses, on estimates to be made by an architect, less a certain per cent., is in effect a contract to pay the price agreed on on the day of completion, and if the amount thereof agreed upon is beyond the constitutional limit of indebtedness, the contract, it was held in Georgia, is void, 68 Ga. 272. On the contrary it was held in Iowa that a contract, by the corporation to pay for work when it shall be performed in the future, does not constitute an indebtedness within the meaning of a like constitutional provision, until the performance of the work, 27 Ia. 227. This decision has been followed in Indiana, 97 Ind. 1. So an ordinance authorizing a private corporation *to construct water-works* within the city upon certain conditions named, and providing that the city may, whenever its financial condition will permit, purchase and control them is valid; for no actual debt is created until the city can lawfully assume it, and then the assumption is entirely optionary with the city, 49 Ia. 58. An agreement by which a city agrees to pay a private person a yearly rental for a *market-house* during a long series of years is void where the amount exceeds the constitutional limit, and there is not annual revenue enough, after meeting other municipal liabilities, sufficient to meet the proposed contract liability, 91 Pa. St. 398. So is a *railroad subsidy*, though payable in the future. Deady, 481.

4. Bonds issued under the act of *March 8, 1889*, commonly known as the *Barrett Law*, (acts 1889, p. 237; Elliott's Sup. §§ 812 to 822,) § 3292*a*, are not the bonds of the city, and can not be taken into account in estimating the indebtedness of the city, even though the city is indebted beyond the limit; such bonds are valid, 124 Ind. 292. So a contract for building a *sewer or improving a street or sidewalk*, where the contractor only receives a *certificate of assessment* upon the owners of adjacent property in full payment is not the city's debt, and it is not affected by this provision of the constitution, 71 Ia. 500; 114 Ill. 562; 54 Tex. 517; 96 U. S. 341; (nor are *free gravel road bonds* issued by a county, 111 Ind. 299); nor liabilities incurred by reason of the *torts* committed by a city or town, so as to prevent a recovery therefor, 9 Colo. 404; 99 Ill. 329; 16 Cal. 591; 38 Ia. 414; 40 Ia. 638; 26 N. E. Rep. 1074; although it does to *implied contracts*, 9 Colo. 404; nor does it apply to the *fees of an attorney* for services rendered in defending the city in an action brought against it to enforce an indebtedness rendered void by the constitution, 116 Ind. 15; nor to the expenses of the county *jailor* in keeping the city's prisoners, 87 Mo. 239. But it does apply to any agreement to pay an *annual rental* for property, 91 Pa. St. 398.

5. This provision of the constitution does not apply to the *State*, 13 Cal. 175; 2 O. St. 607; 13 B. Mon. 16; 10 Wis. 136; 19 Ill. 406; 7 Kan. 479, S. C. 12 Am. R. 425.

6. Uncollected taxes and the levy for the current year can not be deducted from the outstanding debt for the purpose of ascertaining the real indebtedness, 51 Ia. 385; nor the value of property owned by a city outside of the taxable property of its citizens, 67 Ga. 293.

7. Bonds or evidences of debt issued for a debt created after this constitutional provision took effect in violation of its provisions are void even in the

hands of *innocent purchasers* thereof. Every person buying or taking such bonds does so at his own peril; and the representations of the city or town's officers that the bonds are valid will not bind the city nor prevent it from insisting that they are invalid, 114 Pa. St. 435; 109 Pa. St. 554; 9 Colo. 81; 130 U. S. 662, 674; 39 Ia. 490; 43 Ia. 48.

8. Such an illegal indebtedness can not be *ratified* neither by a city nor by the legislature, 67 Tex. 519; 68 Tex. 511; 39 Ia. 490; 43 Ia. 48; 44 Ia. 122; nor is the city liable upon *implied contract* for articles furnished it in payment for which such bonds were issued, 68 Tex. 511; even for the money paid for the bond, 43 Ia. 48; 51 Ia, 385. The fact that a *part of the debt* is not rendered *void* by the constitutional provision does not make the remainder valid. Such bonds are valid to the extent of the authorized issue, and invalid beyond that extent. So a tax levied to pay the principal and interest of such bonds is valid so far as it is necessary to that part of them that are valid, and beyond that it is invalid, 43 Ia. 48.

9. Illinois has a somewhat similar provision; and that provision is construed in the following cases: 74 Ill. 277; 84 Ill. 626, 629; 87 Ill. 385; 89 Ill. 282, 296; 99 Ill. 329; 104 Ill. 222; 105 Ill. 140, 216; 114 Ill. 142, 563; 115 Ill. 239; 124 Ill. 660; 125 Ill. 603; 10 Ill. App. 120; 26 Ill. App. 449. So Iowa has a similar constitutional provision, construed in the following cases: 13 Ia. 229; 15 Ia. 579; 27 Ia. 227; 34 Ia. 208; 35 Ia. 416; 36 Ia. 396; 37 Ia. 542; 38 Ia. 414; 39 Ia. 490; 42 Ia. 614; 43 Ia. 48; 44 Ia. 122; 45 Ia. 168, 666; 47 Ia. 42; 49 Ia. 58; 51 Ia. 385; 52 Ia. 26; 59 Ia. 95; 69 Ia. 140; 70 Ia. 230; 71 Ia. 500.

ARTICLE 15—MISCELLANEOUS.

SEC.		SEC.	
223.	Official appointments.	228.	Commissions.
224.	Duration of office.	229.	Area of county.
225.	Holding over.	230.	Lotteries prohibited.
226.	Official oath.	231.	Public grounds.
227.	State seal.	232.	Tippecanoe Battle-Ground.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

SEC. 223. Official appointments. 1. All officers whose appointments are not otherwise provided for in this constitution shall be chosen in such manner as now is or hereafter may be, prescribed by law.

Construed with reference to the power of the legislature to appoint a state officer, 118 Ind. 390, 393, 445, 446, 466; 119 Ind. 395, 406, 412; 121 Ind. 20, 366, 495; 122 Ind. 17.

SEC. 224. Duration of office. 2. When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office the tenure of which shall be longer than four years.

If the legislature create an office without fixing a limit to its tenure, the incumbent holds it so long as it is the pleasure of the legislature to permit him to do so, not, however, exceeding four years in duration of time, 33 Ind. 418, 423. This section was held to apply to the deputy warden and guards of a penitentiary, 68 Ind. 285.

SEC. 225. Holding over. 3. Whenever it is provided in this constitution, or in any law which may be hereafter passed, that any

officer, other than a member of the general assembly, shall hold his office for any given term, the same shall be construed to mean that such officer shall hold his office for such term and until his successor shall have been elected and qualified.

A *sheriff* holds until his successor is elected and qualified, 8 Ind. 484; so a *constable*, 20 Ind. 169, 173; a *prison director*, 33 Ind. 517; a *township trustee*, 50 Ind. 496; a *prosecuting attorney*, 75 Ind. 518, 522; a *justice of the peace*, 99 Ind. 312. This provision applies to *all officers* elected by popular vote or by the legislature *or by any other organized body*, 113 Ind. 434. Upon the qualification of the newly-elected officer his predecessor is no longer in office, and the latter's bondsmen are not liable for any act of his thereafter, even though he remain ostensibly in possession of the office, 38 Ind. 483. If the newly-elected officer *die* after taking the oath, but *before his term* of office begins, his predecessor can not hold over, 96 Ind. 374. A clerk of the circuit court, who has held the office for eight years consecutively under an election, can not hold over, upon the death, without qualifying, of the person selected to succeed him, 106 Ind. 203.

Sec. 226. Official oath. 4. Every person elected or appointed to any office under this constitution shall, before entering on the duties thereof, take an oath or affirmation to support the constitution of this State and of the United States, and also an oath of office.

1. A failure to take the oath required by this section does not render the office vacant, 8 Ind. 134. The oath need not be subscribed, unless required by statute, 52 Ind. 132. The inspector, appointed by the circuit court, of a turnpike is not an officer, and need not be sworn, 56 Ind. 213.

2. The constitution of the United States requires all executive officers of a State to take an oath to support its provisions, R. S. 1881, § 23.

Sec. 227. State seal. 5. There shall be a seal of state, kept by the governor for official purposes, which shall be called the Seal of the State of Indiana.

Sec. 228. Commissions. 6. All commissions shall issue in the name of the State, shall be signed by the governor, sealed by the state seal and attested by the secretary of state.

Sec. 229. Area of county. 7. No county shall be reduced to an area less than four hundred square miles; nor shall any county under that area be further reduced.

Sec. 230. Lotteries prohibited. 8. No lottery shall be authorized, nor shall the sale of lottery tickets be allowed.

Sec. 231. Public grounds. 9. The following grounds owned by the State, in Indianapolis, namely, the State-House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven as lies north of the arm of the Central Canal, shall not be sold or leased.

Sec. 232. Tippecanoe Battle-Ground. 10. It shall be the duty of the general assembly to provide for the permanent inclosure and preservation of the Tippecanoe Battle-Ground.

SCHEDULE OF CONSTITUTION.

SEC.

235. When constitution takes effect. Municipal acts continued.
Laws continued. Clarksville.

[R. S. 1852, p. 33. Took effect November 1, 1851.]

SEC. 235. When constitution takes effect. This constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the constitution adopted in the year one thousand eight hundred and sixteen.

That no inconvenience may arise from the change in the Government, it is hereby ordained as follows:

Laws continued. *First.* All laws now in force, and not inconsistent with this constitution, shall remain in force until they shall expire or be repealed.

* * * * * * * * * * *

Municipal acts continued. *Fourth.* All acts of incorporation for municipal purposes shall continue in force under this constitution until such time as the general assembly shall, in its discretion, modify or repeal the same.

1. The power to "modify" conferred by this clause of the constitution includes the power to so "amend" the charter that new powers will be granted to the corporation, 106 Ind. 104, 131; 111 Ind. 152; 108 Ind. 189.

2. The power conferred by this section is not restricted by the clause of the constitution prohibiting special legislation (R. S. 1881, § 118); 32 Ind. 322; 111 Ind. 152. Under this clause the legislature may enlarge the jurisdiction of a town or city territorially, or otherwise, 111 Ind. 152.

3. The general rule is that cities or towns acting under a special charter are not effected by the statutes relating to cities or towns incorporated under the general municipal statutory law of this State, 77 Ind. 542. But such charters may be amended by either special or general acts; and whether such is the case depends upon the language used in the alleged amending act, 78 Ind. 261, S. C. 41 Am. R. 561; 108 Ind. 189. The constitution in no way affected the powers of municipalities acting under special charters, 9 Ind. 74. The charter may be amended at any time without the consent of the city, 8 B. 361; 3 Ind. 44, 46; 66 Ind. 396; 102 Ind. 472.

* * * * * * * * * * *

* * * * * * * * * * *

Clarksville. *Sixteenth.* The general assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied according to the intention of the grantor.

The act of June 17, 1852 (special acts of 1852, p. 96), governs Clarksville. See 61 Ind. 97; *Id.* 129; 1 Blackf. 421. The statutes of Virginia and the patent for

Clark's Grant are set out in 1 Blackf. 443, in the appendix. See, also, Hughes *v.* Trustees of Clarksville, 6 Peters, 369.

No portion of the town of Clarksville can separate itself from the remainder and organize as a separate and distinct town under the act of June 17, 1852 (special acts 1852, p. 96). Consequently the town of Ohio Falls, organized within the boundaries of Clarksville, was declared illegal, 61 Ind. 97 (overruling 50 Ind. 535). Concerning power of the trustees of the city to loan money, see 61 Ind. 129. Such trustees may sue for and receive the funds derived from the sale of lots under the charter of 1783, granted by Virginia, according to the terms of the act of June 17, 1852, which is valid, 78 Ind. 269.

STATUTES.

CHAPTER XXI.

CORPORATIONS—CITIES.

ART.

1. *Incorporation and Organization.*
2. *Government and Powers.*
3. *Taxation.*
4. *Improvement of Streets.*
5. *Opening and Vacation of Streets.*
6. *Annexation of Territory.*

ART.

7. *Fire Department.*
7a. *Firemen's Insurance.*
8. *City Courts.*
8a. *Metropolitan Police.*
8b. *Humane Inspector.*
8c. *Drainage.*

ARTICLE 1—INCORPORATION AND ORGANIZATION.

SEC.

3031. Petition—Order for census.
3032. Marshal's assistants—Return.
3033. Notice of election.
3034. Election board.
3035. Manner and return of election.
3036. Town becomes city—Record conclusive
3037. Notice of election.
3038. New wards, how created.
3038*a*. Ordinance necessary.
3038*b*. Repealing clause.
3039. Old cities may adopt this act.
3040. Acquired rights—Interest on orders.
3041. Old officers and ordinances.
3042. Duties of common councils in towns.
3043. City officers.
3043*a*. Qualifications of deputies.
3043*b*. Importing persons to serve as deputies unlawful.
3043*c*. Unauthorized person serving as deputy —Penalty.
3043*d*. Penalty.
3044. Oath of election boards.
3045. Law of city elections.
3046. Canvass of votes.
3047. Inspector's certificate.
3048. Notice to persons elected.
3049. Penalty for refusal to serve.
3050. Vacancies.
3050*a*. Vacancies—How filled.
3050*b*. Length of term.
3050*c*. Term.
3050*d*. Failure to give bond.
3050*e*. Oath, rights and duties of appointee.
3051. Large cities.
3052. Councilmen.
3053. Aldermen.
3054. Legislation—Elections.
3055. Separate action.
3056. Officers—Election.
3057. President of board.
3058. Records—Journal.
3059. Pay of members.
3060. President of board, when acting-mayor.
3061. Sewer tax and districts.

SEC.

3062. Mayor's duties and powers.
3063. Docket fees—Vacancies.
3063*a*. Fees.
3064. Suits by city, what averments unnecessary.
3065. Suits against railroads — Process — Judgment.
3066. Actions for penalties.
3066*a*. Crimes not punishable by city or town.
3067. Imprisonment—Stay.
3068. Clerk's duties—Evidence—Fees.
3069. Orders—Clerk's duties.
3070. Duplicate tax-list.
3071. Assessor's duties.
3072. Assessor's duties.
3073. Civil engineer's duties.
3073*a*. Survey—*Prima facie* evidence—Appeal —Proceedings.
3074. Street commissioner's duties.
3075. Marshal's duties and powers.
3076. Has constable's powers.
3076*a*. Acts through county—Citizens to aid.
3076*b*. Mittimus—Receipt.
3076*c*. Where may arrest fugitive.
3077. Same fees as constables.
3077*a*. Fees.
3078. City attorney's duties and fees.
3079. Treasurer's duties.
3080. Duties of treasurer and clerk.
3081. Treasurer's duties—Interest.
3082. Interest—Orders receivable.
3083. Treasurer's statements and liability.
3084. Treasurer's assessments.
3085. Collecting delinquent taxes.
3086. Lien of taxes.
3087. Collecting taxes.
3088. Sale of land for taxes.
3089. Notice of sale of chattels.
3090. Chattels at auction.
3091. Land, how sold.
3092. Return of land sold—Redemption.
3093. Annual settlement.
3094. Fees on forfeited lands.
3095. Oath—Bonds.

[1869 S., p. 30. Approved and in force April 28, 1869.]

Sec. 3031. Petition—Order for census. 1. Whenever one-third of the voters of any incorporated town, so far as the number can be estimated, shall petition the board of trustees thereof or common council of any incorporated city to be incorporated as a city under this act, such board of trustees or common council, by an order or resolution to that effect entered on their order-book, shall direct the marshal or other officer thereof by a proper warrant, furnishing him with the necessary forms, to take the census of all persons who were residents within the corporate limits of such city or town at least forty days anterior to the date of such order: *Provided, however,* That if it shall appear to said board of trustees or common council, by the last census of this State or of the United States or by any enumeration made by the order of the board of trustees or common council of said city or town within two years from the date of the receipt of such petition, that said town or city had two thousand five hundred inhabitants, said board of trustees or common council shall be at liberty to proceed in all respects as though the said census had been taken in the manner provided by this act.

ESSENTIAL STEPS FOR INCORPORATION OF A CITY.

The following are the necessary steps to be taken in order named to change an incorporated town into a city:

1. *Petition.* A petition must be presented to the board of trustees of the town, signed by at least one-third of the voters thereof, for the taking of a census. § 3031.

2. *Census.* On presentation of the petition the board orders the marshal to take a census of all persons resident of the town for a period of forty days prior thereto. The census may be dispensed with if the last United States census shows there were, when it was taken, 2,500 inhabitants. § 3031.

3. *Marshal's return.* The marshal makes his report at least sixty days from the date of the order. § 3032.

4. *Notice of election.* If the returns show 2,000 inhabitants, within ten days the board must order an election. § 3033.

5. *Election.* The board selects three reputable householders in each ward, and these choose a clerk. On the day named in the notice, a poll is opened in each ward, § 3034; and a return of the result is made up and signed by the election board, § 3035. The election is now held in accordance with the general election law. § 4710*m*.

6. *Certificate of result.* An affidavit of the town trustees is attached to the inspector's statement, affirming that it is true, and within five days after the election is filed with the clerk of the county, of which the clerk makes a record. § 3035.

7. *Date of incorporation.* From the time the inspector's statement is filed and recorded, the town is a city; and the record is conclusive of that fact. § 3036.

8. *City divided into wards.* The town trustees must, within five days after filing the statement, divide the city into at least three wards, each containing not less than three hundred inhabitants. § 3037.

9. *Election notice.* Within the same time they must give ten days' notice of an election of city officers. § 3037.

10. *Officers elected.* Two councilmen for each ward, a clerk, treasurer, and marshal. One councilman holds for one year, and the other for two, to be determined by lot at the first meeting of the common council. § 3043.

11. *Election.* The old trustees appoint the election officers for this election, § 3034 and § 3044, which is governed by the general election law, § 3045 and § 4710*m*; who hold the election and make a return of the result, delivering the result to the inspector. § 3046.

12. *Canvass of result.* The inspectors meet in the council chamber or other place agreed upon, and canvass the result, make out a certificate of the result, and file it with the old town clerk. § 3047.

13. *Notice to persons elected.* The old town clerk, within twenty-four hours after filing the certificate of the election board, notifies those elected, § 3048, who must qualify within five days after receipt of the notice. § 3049.

14. *First council meeting.* The mayor elect calls the first meeting of the council within ten days after the election. § 3096.

15. *Old cities.* Cities acting under special charters may become incorporated under the general law by a resolution of the common council, adopted by a majority vote. § 3039.

NOTES AND FORMS.

1. Courts *presume* that a city of this State is incorporated under the general laws, and not under a special law, unless the contrary is shown either by the pleadings or proof, 25 Ind. 512; 55 Ind. 250; 63 Ind. 155; 69 Ind. 244; 71 Ind. 189; 93 Ind. 533; 70 Ind. 65. So the courts presume that the name of a city is the same that it bore under the old law, although they may not judicially know it to be so, 16 Ind. 227; 7 B. 36. If a city is sued, the court will presume that it is also organized under the general law, 67 Ind. 228. The general law does not prescribe by what name a city organized under it shall be known, 16 Ind. 227.

2. The general act for the incorporation of cities, approved March 14, 1867 (of which the above section is an amendment), *repealed* the general law, on the same subject, approved December 20, 1865, 50 Ind. 569. This law is *not unconstitutional* for want of uniformity in the mode of organization; nor are organizations under it void for that reason, 10 Ind. 70. See § 212, *note.* Nor does the fact that the incorporation is submitted to a vote under the law render it void, 82 Ill. 472; 90 Ill. 186; 103 Ill. 665.

3. A municipal incorporation, being public and sovereign in its nature, is not liable to be sued neither for a failure to exercise powers entrusted to the judgment and discretion of its proper authorities, nor for errors committed in their exercise, 29 Ind. 187. See §§ 3151, and 3161, and *notes.*

4. For qualification of "voters," see §§ 3222, 3223.

5. A city adopting the provisions of this statute is governed by any *amendment* thereof, 82 Ill. 472. Cities are subject at all times to repeal or amendment of their charters or the general laws, at the pleasure of the legislature, 8 B. 361; 106 Ill. 242; 97 Ill. 72; 83 Ill. 95; they are subject at all times to the control of the legislature, 25 Ill. 190; 12 Ill. 1; (police powers, see 126 Ill. 278, 282, *note;*) not, however, to the extent of depriving them of the power of local self-government, 118 Ind. 382, 426.

6. The legislature has no power to grant a *special charter* to a city. The constitution prohibits it, § 212, *note.* But it may amend the charter of a city granted and in force previous to November 1, 1851, the time at which the present constitution went into force. § 235, clause 4, *note.*

7. It is only an incorporated town that can become an incorporated city. There is no law authorizing the inhabitants of a given territory, not incorporated first as a town, to be incorporated as a city. For incorporation of a town, see § 3293. A signer may withdraw his name before acted upon, 42 O. S. 215; but not afterwards, 24 Ind. 146.

8. Upon presentation of a proper petition it is *compulsory* upon the board or common council to proceed in the manner directed by this and the follow-

ing sections, 78 Ill. 382. In the case of a city the same is true; but the common council also have the power to adopt this act, § 3039. The mayor alone can not order an election. 89 Ill. 338. Whether or not one-third of the voters signed the petition, is a question for the board of trustees, and their decision is conclusive, 15 Ind. 395.

9. The following forms, by slight changes, are also applicable to the case of a city desiring to adopt this act, and abandon its special charter.

Petition for the Incorporation of a Town as a City.

To the Board of Trustees of the Town of ———:

Your petitioners, being one-third of the voters of said town, respectfully represent that they desire that said town be incorporated under the general act of the general assembly of the State of Indiana (and amendments thereto) for the incorporation of cities; and say that said town has a population of 2,000 inhabitants, a number requisite for such incorporation.

[Signed by one-third of all the voters of the town.]

Journal Entry on Presentation of Petition.

Whereas, a petition has been presented to the board of trustees of this town of ———, signed by R. T. and one-third of all the voters of said town, praying that said town be incorporated as a city under the general act (and amendments thereto) of the general assembly of the State of Indiana for the incorporation of cities, and alleging that this town has 2,000 inhabitants; and

Whereas, this board of trustees are satisfied and so find that the persons who signed said petition constitute at least one-third of all the voters of this town; therefore, the marshal of this town is hereby ordered and directed to take a census of all persons who are now and have been residents within the corporate limits of said town for a period of forty days anterior to this date, viz.: ———, 18—, and make a full return thereof under oath to this board within sixty days from the testing of this order. The clerk of this town is hereby ordered to deliver to said marshal a certified copy of this order, which shall be taken and deemed a sufficient warrant to enable him to take said census. He shall also furnish him with all necessary forms and papers for such purpose.

Election Ordered Without a Census.

Whereas, it appears to the board of trustees of this town that said town of ———, by the last census of this State, [*or*, of the United States, *or*, by an enumeration made by the order of this board of trustees by the marshal of this town, which enumeration was made in the months of ——— and ———, 18—,] had a population of 2,500 inhabitants [*or*, by the special census of the marshal of this town ordered by this board on the ——— day of ———, 18—, to be taken by said marshal, that on the ——— day of ———, 18—, and at least for forty days anterior to the date of said order, said town had a population of at least 2,000 persons *bona fide* residents thereof]; and

Whereas, R. T. and other the voters of this town have petitioned said board that said town of ——— be incorporated as a city under the general act (and the amendments thereto) of the general assembly of the State of Indiana for the incorporation of cities therein; and

Whereas, this board finds that said petitioners so signing said petition constitute fully one-third of the voters at the date of the receipt of said petition by this board, viz.: the ——— day of ———, 18—, of the voters of this town, viz.: the town of ———, State of Indiana; therefore,

SEC. 1. *Be it ordained by the board of trustees of the town of ———:*

[Proceed as in the form of the ordinance given under § 3033.]

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3032. Marshal's assistants—Return. 2. Such marshal or other officer, with the concurrence of such board or council, may appoint assistants, and shall, within sixty days from the time of receiving such warrant, make full returns, under oath, to said board or council, of the resident population in such town or city as aforesaid.

This section does not require the marshal to make and return a list of the names of the inhabitants.

Ratification of the Marshal's Appointment of Assistants.

Whereas, A. B., marshal of this town, has appointed C. D. and E. F. assistants to aid him in taking a census of the inhabitants of this town, as ordered by this board ———, 18—, this board hereby concurs in said appointment, and approves the same.

Marshal's Return.

To the Board of Trustees of the Town of ———:

I most respectfully report to your honorable body, that pursuant to your order of ———, 18—, I have taken a census of all persons who were at that date, and had been for forty days anterior thereto, inhabitants of said town; and I find that there were at said date ——— inhabitants thereof.

A. B.,
Marshal of the Town of ———.

I, A. B., upon my oath say that I am marshal of the town of ———; and that the report and return above made is true.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

L. M.,
Notary Public.

[1875, p. 30. Approved March 11, 1875, and in force August 24, 1875.]

SEC. 3033. Notice of election. 3. If the return shall show a population of two thousand persons or more, the trustees or common council, within ten days thereafter, shall publish a notice to the voters of such town or city, as in other corporations, stating that on a day, at a place named, a poll will be opened to determine whether such town or city shall be incorporated as a city.

1. Only *one poll* can be opened, and not a poll in each ward, as the following section would seem to indicate. See 109 Ind. p. 77.

2. The notice of election is governed by § 3304.

Election Order.

Whereas, R. T., and one-third of the inhabitants of this town, on the ——— day of ———, 18—, presented a petition to the board of trustees of this town, praying that this town be incorporated as a city under the general laws of the State of Indiana; and,

Whereas, pursuant to the request of said petition, this board on the ——— day of ———, 18—, ordered the marshal of said town to take a census of all the

persons who were then and had been inhabitants forty days previous thereto of said town; and make return thereof to this board; and,

Whereas, said marshal has taken a census of all such persons, and made return thereof under oath to this board; and,

Whereas, by the return of said marshal it appears, and this board so finds, that there were on said ——— day of ———, 18—, more than 2,000 of such persons, viz., ———, who were then and had been for at least forty days anterior to the date of said order, inhabitants of this town; therefore,

SEC. 1. *Be it ordained by the board of trustees of the town of ———:*

That an election be held on the ——— day of ———, 18—, to obtain the sense of the voters of said town of ——— on the question of such incorporation, and that a poll be opened at the place herein designated, viz., at the school-house situated at the corner of Vermont and Illinois streets, for such purpose.

SEC. 2. That ten days' notice of the time and place of opening the polls of and holding said election, be given by publication in the ——— *Daily Argus* [*or*, by posting notices in five public places in said town].

Election Notice.

To the Voters and Inhabitants of the Town of ———:

Notice is hereby given to all such persons, that a poll will be opened in said town from 6 a. m. to 6 p. m. on the ——— day of ———, 18—, at the place hereinafter designated, for the purpose of determining whether or not said town shall be incorporated as a city under the general act (and the amendments thereto) of the general assembly of the State of Indiana for the incorporation of cities, in accordance with the petition of R. U. and other voters of said town, presented to the board of trustees of said town on the ——— day of ———, 18—, praying that said town be so incorporated, viz.,

At the school-house situated at the corner of Vermont and Illinois streets.

A. B.,
C. D.,
E. F.,
Board of Trustees of the Town of ———.

Attest:
V. X.,
Clerk.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3034. Election board. 4. The trustees or common council shall appoint three reputable voters in each ward, one to act as inspector and two as judges of elections therein; and the persons thus appointed shall choose a clerk of such election. Such trustees or council shall also procure and deliver to such inspector, at least one day prior to such election, a ballox-box, which shall thereafter be retained for the use of such ward. If such inspector or judges, or either of them, or the clerk, after appointment and acceptance thereof, neglect or refuse to serve, such inspector or clerk shall forfeit and pay for the use of such city any sum not exceeding forty dollars, which shall be recoverable in an action at law; and the electors, being met on the day appointed, may choose, by voice, such inspector or judges as may be necessary to organize the board; and the inspector or judges so chosen may select the clerk.

1. Only one inspector and two judges are to be appointed; for only one poll in the town can be opened, see § 3033, and *note*.

2. The incorporation is governed by the general election law, with reference to the *time of day* during which the poll shall remain open, viz.: from 6 a. m. to 6 p. m., § 4698.

3. In an action against an election officer for failing to serve upon the board of election, the action is brought by the town if it is not incorporated as a city, or if brought before the town becomes incorporated; but if brought after an incorporation is effected, it must be brought by the newly-incorporated city. In the latter instance the form given below can be changed to suit the facts.

Appointment of Election Officers.

For the election to be held in this town on the ——— day of ———, 18—, L.V. is hereby appointed inspector, R. S. and U. Z. judges, all of whom are reputable voters of said town.

Complaint to Recover Penalty.

The town of ——— complains of L.V. and says: That on the ——— day of ———, 18—, at a regular session of the board of trustees of said town a petition was presented to said board by one-third of the voters of said town, praying that said town be incorporated as a city under the general laws of the State of Indiana; that in pursuance of the prayer of said petition said board ordered the marshal of said town, by a warrant directed to him, to take a census of all persons who were residents of said town at the time said petition was so presented, and who had been for a period of forty days anterior thereto; that said marshal did take said census and make a return thereof to said board, by which it appeared that more than 2,000 persons were, and had been for forty days anterior thereto, inhabitants of such town anterior to the date of said order; that, thereupon, said board ordered an election to be held in said town on the ——— day of ———, 18—, ordered a poll to be opened at a certain described place in said town, of which due notice was ordered to be given, and appointed said L. V. inspector at said poll; that the clerk of said town gave notice of said election, and immediately notified said L. V. that he was appointed such inspector, which appointment said L.V. then and there accepted; and that upon the day appointed for said election said L. V. wholly neglected [*or*, refused] to serve as such inspector for said day, or any part thereof.

Wherefore said town demands judgment in the sum of forty dollars for the use of said town; and prays for all other proper relief.

A. B.,
Attorney for the Plaintiff.

Sec. 3035. Manner and return of election. 5. Such election shall be governed by the same rules as other corporation elections. And the ballots of the voters shall have thereon the word "yes" or the word "no"; and if a majority of the ballots given at such election have thereon the word "no," the voters of such town or city shall be deemed not to have consented to its incorporation as a city, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "yes," the inspector shall make a statement showing the number of votes given having the word "yes" and the number having the word "no" thereon; and such statement shall have attached thereto the affidavit of such trustees or of the mayor of such city, verifying the truth of the same, and, within five days after such election,

shall be filed in the office of the clerk of the circuit court of the proper county. The clerk shall make a record thereof, for which he shall receive the same fees as are paid him for like services in other cases.

1. The general election law of 1889 manifestly applies to an election for the incorporation of a city, so far as applicable, especially with reference to the ballots. § 4710*j* and § 4710*m*.

2. The inspector and judges are officers under this section, their duties not being judicial but ministerial. They may be compelled by mandate to make the proper return, 39 Ind. 488; or at least the inspector may be, if a result in favor of the incorporation has been ascertained, and he and the judges may be compelled to count the ballots for and against such proposed incorporation in order to ascertain the result. If a majority of the ballots are *against the proposed incorporation*, no return is required and no further proceedings need be taken. The statute does not require the judges to sign the return, although the better practice is for them to do so. The certificate of the inspector is the sole evidence on which the board of trustees and clerk of the circuit court can act, 123 Ill. 328.

3. In order to authorize the incorporation it is sufficient that a majority of those who voted are in favor of it; and the fact that a majority of all the voters in the town did not vote in favor of it does not prevent an incorporation, 109 Ind. 73; 67 Ill. 62; 65 Ill. 290; 56 Ill. 413. A submission, however, to only a part of the city, or in certain precincts thereof, would be a void election, 46 Ill. 415. How far such an election can be contested, see § 3036.

4. The statute does not declare where the return shall be recorded by the clerk, but presumably in the order book. When so done the clerk should append a certificate thereto, and file away the original. A failure to file the return within the five days does not prevent its being filed thereafter.

Election Return.

Statement of the number of votes cast in the town of ———, in the State of Indiana, at an election held in pursuance of the order of the board of trustees of said town on the ——— day of ———, 18—, for the purpose of determining whether or not said town should be incorporated as a city under the general act (and the amendments thereto) of the general assembly of the State of Indiana for the incorporation of cities, in accordance with the petition of R. T. and other voters of said town.

Number of ballots having thereon the word "yes," . . ———
Number of ballots having thereon the word "no," . . ———

Total number of ballots, ... ———
Majority in favor of the incorporation, . . . ———

———
Inspector.

———

———
Judges.

Affidavit of Board of Trustees attached to the Election Return.

State of Indiana, County of ———, *ss.*

A. B., C. D., and E. F., upon their oath state that they constitute the board of trustees of the town of ———, in the State of Indiana; that on the ——— day of ———, 18—, an election was held in said town for the purpose of determining whether or not said town should be incorporated as a city under an act (and the amendments thereto) of the general assembly of said State, for the incorporation of cities, pursuant to notice duly given, which resulted as fol-

lows, as shown by the foregoing statement of the inspector and judges of elections, viz.:

Number of ballots having thereon the word "yes," . . ———
Number of ballots having thereon the word "no," . . ———

Total number of ballots, ... ———
Majority in favor of the incorporation, . . . ———

A. B.,
C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.

Notary Public.

Journal-Book Entry.

Be it known that at the election held on the ——— day of ———, 18—, in the town of ———, under an order of the board of trustees of said town, duly made upon petition signed by at least one-third of voters of said town, for the purpose of determining whether said town should be incorporated as a city under the general laws of the State of Indiana for the incorporation of cities, and amendments thereto, which election was had and held after a proper census of the inhabitants of said town had first been made by the marshal of said town, showing a population of over 2,000 inhabitants, and after the notice thereof had been given in pursuance of the order of said board of trustees, that a majority of the ballots cast were in favor of incorporating said town as a city, as appears from the return of the election inspector, to wit:

Those in favor of incorporating as a city, ... ———
Those opposed to incorporating as a city, ... ———

Total, ... ———
Majority in favor of incorporating as a city, . ———

SEC. 3036. Town becomes city—Record conclusive. 6. Such town shall thereafter be deemed an incorporated city, with the powers and franchises appertaining thereto; and the record in the office of the clerk, as aforesaid, shall be held in all courts as conclusive evidence of such incorporation in any suit pending therein. But nothing in this act contained shall preclude any person interested from showing that a majority of the legal voters of any such town or city had not agreed to such change.

If the town is changed to a city, the latter is liable for the costs of the election; if no change is made, the town is liable.

1. The incorporation dates from the time of *filing* the statement referred to in the above section, and not from the time of recording it.

2. The record is *conclusive* that a proper statement was filed and recorded, and of all proceedings previous thereto. The only thing an interested person (and only by a direct proceeding, 76 Ill. 49) attacking the corporation can show, is, that a majority of the ballots cast was not in favor of the new incorporation. Even the regularity of the census can not be questioned. The legality of the change can only be tested by an information, and when brought by a private person, must show (1) that the relator is interested in the subject-matter, (2) that he did not by his vote, or otherwise, concur in the proceedings of which he complains, and (3) that, where there is no fraud or intentional violation of law, no public or private interest will be seriously affected by the granting of the relief demanded, 109 Ind. 73. Perhaps the *prosecuting attorney* could attack, by information, the organization of the city, 72 Ind. 161; 84 Ill. 162; 70 N. Y. 518; but the legality of such organization can not be attacked in an in-

formation brought to test the right of a person claiming to exercise an office of such a city. It can not be attacked *collaterally*, 65 Ind. 492; 47 Mo. 17; 3 East 119; 7 Rich L. 234; 50 Ill. 39; 46 Ill. 9; 24 Ill. 22; 20 Ill. 197; *contra* in New York, by statute, 24 N. Y. 86, and Minnesota, 25 Minn. 215. See 31 N. J. L. 355; 15 Mich. 463; 29 Mich. 451, S. C. 18 Amer. R. 107; 41 Mich. 647; 10 Mass. 290, S. C. 11 Am. Dec. 339. If the officers of a corporation are acting without the scope of their authority the remedy is by injunction, 65 Ind. 492; 106 Ind. 66; but the legality of the incorporation can not be thus tested, 70 N. Y. 518. Any one sued by a city can not question its organization or incorporation, 24 Ala. 398; 69 Ind. 273; 50 Ill. 39; 78 Ill. 237. The charter of a city or town can not be declared *forfeited* by reason of the neglect or misconduct of its officers, 14 Pa. St. 177; 24 Ala. 398; 30 Ala. 66; 103 Mass. 138; 123 Mass. 460; 1 Dill C. C. 130.

3. The city takes the *name* of the town it succeeds. There is no statute upon the subject, 16 Ind. 227. In matters touching its school interests the city must sue or be sued as the "school city of———," 55 Ind. 7; 47 Ind. 554; 62 Ind. 257; 67 Ind. 380; 109 Ind. 559. See § 4438, *note*. The word *town* comprehends a city, being generic, 24 Ind. 286; a town is not always a city; but a city is always a town, 55 Ind. 535. *Process* is served on the mayor, R. S. 1881, § 316; or in an action against the school city, on the school trustees, R. S. 1881, § 4536; 55 Ind. 7. By the transition from a town to a city the latter is liable for the *debts* of the former, 50 Ill. 453; 3 Dana (Ky.) 10; 21 Cal. 668; 93 U. S. 266; 2 Woods, 662; 38 Kan. 562; 29 Fed. Rep. 742; 35 Fed. Rep. 32. The *town ordinances continue in force* so far as they are not inconsistent with the law appertaining to cities, 77 Ind. 542; 31 Pa. St. 515. The city succeeds to all the *rights and property* of the old town, 7 Wall 1; R. M. Charlt. (Ga.) 342; 3 Pet. 398; 1 Rob. (La.) 279; 39 La. An. 439; 76 Ill. 447; 101 Ill. 478.

4. "A municipal *corporation* is *composed of the inhabitants* of the territory over which its limits extend, and not of the officers. It is an instrumentality of local self-government, and every voter is a participant in the governmental affairs of the corporation. There, as elsewhere in free governments, the majority rule, and the officers elected are the representatives of the citizens, and their official acts are the expressions of the public," 100 Ind. 575, 443; 97 Ind. 1, S. C. 49 Am. R. 416.

5. The incorporation of the city of *Kokomo* was legalized March 8, 1875 (acts 1875, p. 92); and of *Seymour*, March 7, 1879 (acts 1879, p. 17).

SEC. 3037. Notice of election. 7. The trustees or common council of such town or city shall, within five days after the filing of such statement, divide the city into not less than three wards; but no ward shall contain less than three hundred inhabitants; and they shall also, within the time aforesaid, cause to be given to the voters thereof ten days' notice, by publication in one or more newspapers printed in such city, or county in which the same is situated, and by posting copies of the same in three public places in each ward, that an election will be held in each of the several wards, on a day and at the places therein named, for the election of the city officers specified in such notice.

1. The courts will not take *judicial notice* of the number of wards or of councilmen in a city, 40 Ind. 310. If not performed within five days after the *filing* of the statement it may be done thereafter. See 51 Ill. 49. This must be done by the board of trustees at their regular or a special session; it can not be done as individuals. The order for an election may be *entered in the journal book* or record of the old town, or in a new book procured for the city's use.

2. The *election law of 1889* governs an election under this section. § 4710*m*.

3. The *term* of the office of *councilmen*, at the first election, is determined by lot. § 3043.

4. By the act of 1889, § 4686, the board must also divide the ward into precincts. See also § 3224.

5. *Mandamus* lies to compel the town officers to forthwith proceed to divide the city into wards and call an election, 106 Ill. 242.

Journal-Book Entry of Creation of Wards.

It is ordered that the city of ——— be, and the same is hereby, divided into ——— wards, defined as follows:

Order for Election.

It is hereby ordered that an election be held in each of the several wards of the city of ——— on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., for the purpose of electing a mayor, city clerk, treasurer, marshal, and two councilmen for each ward, to wit:

Ward Number One. At the Court House, etc.

It is also ordered that the clerk of this board give due notice of such election, by publication for ten days in the ——— *Daily Argus*.

Election Notice.

To the Voters of the City of ———:

You are hereby notified that an election will be held in each of the several wards of said city, at the places hereinafter designated, on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., for the purpose of electing a mayor, city clerk, treasurer, marshal, and two councilmen for each ward, to wit:

Ward Number One. At the Court House, etc.

By order of the board of trustees of the town of ———.

A. B.
Clerk.

[1891, p. 83. Approved and in force March 4, 1891.]

Sec. 3038. New wards, how created. 1. The common council of all cities in the State, organized under "An act to repeal all general laws now in force for the incorporation of cities, and to provide for the incorporation of cities, prescribing their powers and rights, and the manner in which they shall exercise the same, and to regulate such other matters as properly pertain thereto" (approved March 14, 1867), shall have the power and are hereby invested with the authority to divide the said cities into wards, to change the boundaries of existing wards, and to redistrict the city for ward purposes whenever, in their judgment, it shall be deemed expedient so to do. Such wards shall contain, as nearly as possible, an equal number of voters, and be composed of compact and contiguous territory: *Provided, however,* That no division into wards, or change of existing ward boundaries, or redistricting for ward purposes, shall be made oftener than once in every period of ten (10) years.

This act of 1891 repeals § 79 of the general city law, as amended in 1881, authorizing the change of wards only upon petition. This section is here substituted for that section.

Sec. 3038*a*. Ordinance necessary. 2. The common council of said cities shall, upon doing any of the acts or things in § 1 [3038], above enumerated, do so by ordinance, and upon the doing of the same shall give notice of such action by at least three publications for three consecutive weeks in two papers of opposite politics published in said city.

Notice of Change in Ward Boundaries.

Notice is hereby given to the inhabitants of the city of ——— that on the ——— day of ———, 18—, the following ordinance was introduced in the common council of said city, and that the same was adopted by said common council on the ——— day of ———, 18—, viz.: [*Set out the ordinance at length.*]

In testimony whereof I have hereunto set my hand and the seal of said city on this ——— day of ———, 18—.

[City Seal.]

A. B.,
Clerk of the City of ———.

Sec. 3038*b*. Repealing clause. 3. All laws and parts of laws coming in conflict with any of the provisions of this act be and the same are hereby repealed.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3039. Old cities may adopt this act. 80. Any city heretofore incorporated under a law of this State may, by a resolution of the common council, adopted by a majority vote thereof and entered upon their record-book, become a municipal corporation under this act. The same shall be deemed a surrender of the charter of such city, with all the rights and franchises therein contained; and no such city shall be entitled to any provision of this act without adopting the whole act.

See § 3031, *note*. This resolution need not be published. Any old city adopting the general law is governed by any amendment thereof, 82 Ill. 472.

Journal-Book Entry.

Resolved by the common council of this city of ———, That an act (and the amendments thereto) of the general assembly of the State of Indiana, approved March 14, 1867, entitled "An act to repeal all general laws now in force for the incorporation of cities and to provide for the incorporation of cities prescribing their powers and rights, and the manner in which they shall exercise the same, and to regulate such other matters as properly pertain thereto," be and the same is hereby adopted by this common council of this said city as the law of its incorporation; and all the rights and franchises under the present charter of this city is hereby surrendered.

Sec. 3040. Acquired rights—Interest on orders. 81. No rights acquired or liabilities incurred in favor of or against the city, and no suit or prosecution of any kind pending, shall be affected by the surrender thereof, as provided in the preceding section, but the same shall remain and be in progress as if no change had been made; and all property, real and personal, of any kind whatever, belonging to any town or city before its acceptance of this act,

shall be and remain the property of such city from and after its adoption of this act. Cities shall, in all cases, be liable to pay interest on their orders or other liabilities payable on demand from and after such demand, which shall be indorsed on the same by the treasurer when presented.

See § 3036, *note* 3, touching liability of city for town's indebtedness. For *interest* on city orders, see § 3081.

Sec. 3041. Old officers and ordinances. 87. Officers of any city coming under this act shall remain and continue in their respective offices subject to the provisions of this act, and perform the duties herein required, until the expiration of the term for which they were elected, and until their successors are chosen and qualified, under the oaths of office already taken and under the official bonds already filed: *Provided*, That this section shall not extend to any office or officer not recognized by this act. All by-laws, ordinances, and regulations, not inconsistent with this act, shall remain and continue in full force until altered or repealed by the common council of such city.

Touching the continuance of old ordinances in force, see § 3036, *note* 3; 101 Ill. 478; 5 O. 394. The old charter is abrogated and the tenure of all old offices terminated, except such as are within the saving clause of this section, 106 Ill. 242; 83 Ill. 95; 24 Ill. App. 19; 78 Ill. 237. The length of the term of such offices is completely under the control of the legislature, 67 Ill. 333; 19 Ill. 38; 1 Scam. (Ill.) 537. This does not render valid an ordinance passed by a town not having the power to pass it, even though the city to which it is changed has such power, 5 O. 394.

Sec. 3042. Duties of common council in towns. 90. In those incorporated towns, which have a common council instead of a board of trustees in their organization, the duties of this act required to be performed by the board of trustees shall be performed by the common council: *Provided*, That this act shall be in force from and after its passage in all the cities which previous thereto have been organized and acting under the several acts hereby repealed, without any further acceptance or proceedings on the part of any such city.

[1877, p. 12. Approved and in force March 6, 1877.]

Sec. 3043. City officers. 8. The officers of such city shall consist of a mayor, two councilmen from each ward, a city clerk, assessor, treasurer, civil engineer, street commissioner, and marshal, and (if the common council deem it expedient) a city attorney and a city judge. The city attorney, the street commissioner, and a civil engineer shall be appointed by the common council: *Provided*, That the common council may dispense with the street commissioner, and require the marshal to perform his duties. All such officers shall hold their respective offices for two years, and until their successors are elected and qualified, except as herein provided. After the first general election on the first Tuesday in May, said officers shall respectively hold their offices as follows, to wit: The

mayor, city judge, clerk, marshal, treasurer, and assessor, two years each: *And provided*, That the term of office of the clerk, treasurer, and assessor shall commence on the first Monday in September following the general election in May, and that the term of office shall be two years from such Monday in September: *And provided, further*, That the clerks, treasurers, and assessors now in office, and whose terms expire in May, shall hold their respective offices until the first Monday in the month of September next ensuing the expiration of their term in May; and that such clerks, assessors, and treasurers as may elect to so hold, shall procure, from their sureties, a written consent to the aforesaid extension; otherwise their terms of office shall terminate in May of the original term for which they were elected. The city attorney, street commissioner, and civil engineer, two years each, subject to removal by said common council at their pleasure. And the councilmen shall be elected by the legal voters of their respective wards; and one councilman from each, to be determined by lot at the first regular meeting after their election, shall hold his office one year, and the other, to be determined in like manner, shall hold his office two years; and, annually thereafter, one councilman shall be elected by the legal voters of each ward. And all of said officers shall hold their respective offices during their respective terms, and until their successors are elected and qualified. The said clerk, assessor, treasurer, and marshal, with the consent of the common council, may appoint one or more deputies when necessary. *Provided, further*, That the common council of a city governed by this act may order the election of an auditor, who shall be elected as other city officers are elected, and shall hold his office for two years, and until his successor is elected and qualified; and the common council shall have power to prescribe the manner of qualifying for such office, and to prescribe the powers and duties thereof, which shall in no wise conflict with the provisions of this act. *And provided, further*, That no person shall hold the office of councilman unless, at the time of his election, he is a resident of the ward from which he is elected; and in case of the removal of any councilman from the ward from which he was elected, the common council shall have power to declare his office vacant, and order a special election to fill the vacancy.

The office of councilman in a city is not *lucrative*, 44 Ind. 401.

1. See § 90, *note*. Under the act of 1859 the first general election was held on the first Tuesday in May, 13 Ind. 502. For general duties of *mayor*, see § 3062; of *clerk*, §§ 3068 to 3070; of *assessor*, §§ 3071, 3072; of *treasurer*, §§ 3079 to 3094; of *civil engineer*, § 3073; of *street commissioner*, § 3074; of *marshal*, §§ 3075 to 3077; of *city attorney*, § 3078. There is no law now in force authorizing the common council to elect a *city judge*, it being repealed, if not before, by the act of 1875, §§ 3204 to 3221. Touching the *removal* of the city attorney, street commissioner, and civil engineer, see § 3101 and *note*. For election of *chief engineer of the fire department, board of health, sealer of weights and measures*, and *supervisors of streets*, see § 3098; *when* such officers are *elected*, § 3098.

2. The right of *local self-government* can not be taken away from a city; nor can the legislature elect officers for a city. It can not interfere with the right of a city to provide and maintain a fire or police department. Consequently, the whole act of March 7, 1889 (acts 1889, p. 222, El. Sup. §§ 721 to 737), is *unconstitutional*, 118 Ind. 426, 449; 123 Ind. 17; 121 Ind. 514. So is the entire act of March 8, 1889 (acts 1889, p. 247, El. Sup. §§ 759 to 783), which assumes to give the exclusive control of the streets, alleys, sewers, light, water supply, etc., of certain cities, to a board of control chosen by the legislature, 118 Ind. 382.

3. The *legislature* may *create* a municipal *office*, but it can not fill it, 118 Ind. 382, 426, 449; 121 Ind. 514; 123 Ind. 17. The office being entirely statutory, the legislature may *abolish* it, even during the unexpired part of an incumbent's term, 18 Ind. 264; 17 Ind. 483; 7 Ind. 157, 172; 50 Ind. 194; 27 Ind. 465; or they may extend it.

4. The office of mayor is a *judicial office;* and during the term for which he is elected he can not be elected to any other office, except to a judicial office. See § 176, *note;* 12 Ind. 569; 14 Ind. 93; 35 Ind. 111, see 41 Ind. p. 577; R. S. 1881, § 5553. He does not need a commission before entering upon his official duties, 20 Ind. 1; 21 Ind. 516; 33 Ind. 390; such commission is only *prima facie* evidence of the facts recited in it, 61 Ind. 379; if it extends beyond the term of office it will not extend such term, 72 Ind. 297. For commission of other city officers, see § 3048, *note.*

5. Members of the council are *not liable* either civilly or criminally for acts done by them as such, in the exercise of a discretion confided to them by law, unless they act corruptly or maliciously, 27 Ind. 485; 32 Ind. 239; nor for honest mistakes or errors of judgment for acts within the scope of their authority, if a *quasi*-judicial authority, 17 O. 402; 13 O. 523, 157; 7 How. 89. *Notice* to the council of a defective street or bridge is notice to the city; and if the council has appointed a committee to examine such defect, its report is admissible in evidence to show knowledge of such defect in the city, 74 Ind. 520. Even notice of such defect to one councilman is notice to the city, 74 Ind. 378, S. C. 39 Am. R. 79; 20 Am. L. Reg. 796. Usually the officer who has notice of a defective street, must have some power or duty with respect to it, in order to bind his city by such notice, 98 Mass. 39 (mayor); 91 N. Y. 137 (policeman); 30 Vt. 155; 71 Pa. St. 140.

6. The common council may *remove* the city attorney, street commissioner, or civil engineer at their pleasure by a bare majority vote without preferring charges against him; but if charges are preferred, then a two-thirds vote is essential to effect a removal. See § 3101, 32 Ind. 74; 119 Ind. 481. So long as he remains in office he has the right to discharge the duties thereof, 97 Ind. 101.

7. Unless the council consent to it, neither the clerk, assessor, marshal, nor treasurer can appoint a *deputy*. Without such consent such deputy's acts are void, 49 Ind. 491. The council can not delegate to a person, under the guise of a deputy treasurer, the duties of his principal, to the latter's exclusion, 88 Ind. 62.

8. If the services of a *street commissioner* are dispensed with, and he is then *re-appointed*, his term of office commences from the time of his last appointment, and continues two years, 97 Ind. 101. The council possess no power to suspend him or release him from the discharge of his duties and still retain him in office, 97 Ind. 101; 59 Ind. 364.

9. The mere fact of *removal* by a councilman from his ward does not vacate his office; but it furnishes a sufficient cause to authorize the council to declare his office vacant, and order a special election.

10. An officer removed by the council does not hold until his successor is elected and qualified. 44 O. S. 98.

11. The right to appoint a deputy marshal is limited to residents of the State, § 3043*a*.

Journal-Book Entry Concerning Vacancy in Office of Councilman.

Whereas, A. B. was duly elected councilman from the ——— ward of this city at the general city election held on the ——— day of ———, 18—; and

Whereas, said A. B., after accepting such office, removed from said ward and is now no longer a resident thereof; therefore it is declared by this council that a vacancy exists in the office of councilman for said ward held by said A. B., and it is hereby ordered that a special election be held in said ward at the usual voting place therein, to wit: At the court-house, on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., for the purpose of filling said vacancy, due notice of which the clerk of this city is hereby directed to give by publication for ten days in the ——— *Daily Argus*.

Special Election Notice.

To the Voters of Ward number ——— of the City of ———:

You are hereby notified that a vacancy was declared on the —— day of ———, 18—, by the common council of said city to exist in the office of councilman of said ward, caused by A. B., duly elected and acting councilman thereof, removing from said ward; and at the same date said council ordered that a special election be held in said ward, at the usual voting place therein, to wit, the court-house, on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., to fill said vacancy, and that upon said day, between the hours aforesaid, a poll will be opened at said place for the purpose aforesaid.

X. Y.,
Clerk of the City of ———.

[1889, p. 302. Approved March 9, 1889, and in force May 10, 1889.]

Sec. 3043*a*. Qualifications of deputies. 1. No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputies, marshals, or policemen in this State, to preserve the public peace and prevent or quell public disturbance, shall hereafter appoint as such special deputies, marshals, or policemen any person who shall not have resided continuously in this State for the period of one year at least, and in the county where such appointment is made for the period of at least six months, prior to the date of said appointment. [El. Sup. § 1959.]

Sec. 3043*b*. Importing persons to serve as deputies unlawful. 2. It shall be unlawful for any person, company, association, or corporation to bring or import into this State any person or persons or association of persons for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, marshals, policemen, constables, or peace officers in the protection or preservation of public or private property or in the punishment of any person violating the criminal laws of this State. [El. Sup. § 1960.]

Sec. 3043*c*. Unauthorized person serving as deputy—Penalty. 3. That any person or persons who shall in this State, without due authority, exercise or attempt to exercise the functions of, or hold himself or themselves out to any one as, a deputy sheriff, marshal, policeman, constable, or peace officer shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, in the discretion of the court or jury, be imprisoned in the penitentiary for any period not more than one year, to which may be added a fine not exceeding one hundred dollars. [El. Sup. § 1961.]

Sec. 3043*d*. Penalty. 4. Any person or persons violating any of the conditions of section one of this act shall, upon conviction, be liable to the same punishment as prescribed in section three. [El. Sup. § 1962.]

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3044. Oath of election boards. 9. Before the opening of the polls on the day of such election, the inspector and judges thus appointed, and the clerk, shall each and severally be sworn, by an officer authorized to administer oaths, to the faithful discharge of their respective duties as officers of such election.

This section is a continuation of the duties of § 3037. See §§ 4692, 4693.

Sec. 3045. Law of city elections. 10. All elections of such cities shall be governed by the laws in force regulating township and other elections; and the voters therein shall have the like qualifications and be subject to the same restrictions and liabilities.

City elections are now governed entirely by the general election law of 1889, § 4710*m*, so far as applicable.

Sec. 3046. Canvass of votes. 11. When the poll of any such election is closed, the inspector and judges thereof, in each of said wards, shall immediately proceed to canvass the votes therein given, and shall make out, under their hands, a statement specifying the number of votes each person voted for has received, and the office designated thereby to fill; and said statement, together with the poll-list and one of the tally-papers, shall be deposited with the inspector, or, if he should be unable to further serve, with one of the judges elected by such board of election.

See §§ 4709*a* and 4710. Under this section the inspectors and judges are officers of the law; and their duties are ministerial and not judicial. Mandate lies to compel them to canvass the votes and make out a statement of the result, 39 Ind. 488.

Sec. 3047. Inspector's certificate. 12. The inspectors named in such appointment, if at the first election, or the inspector appointed as hereinafter provided, if at a subsequent election, of the several wards shall, on the day next following the same, meet at the common council room, and, upon the inspection of the statements aforesaid, determine the persons having the highest number of votes for each of the several offices voted for; and thereupon shall make and sign a certificate, setting forth the names of the persons voted for and for what offices, the whole number of votes given for each of the several offices, and the person having the highest number therefor, and shall declare the person elected to the same. Such certificate shall be filed with the clerk of the corporation. Should two or more persons have an equal and the highest number of votes for the same office, such board of inspectors shall certify the fact to the trustees or common council, as the case may be, who shall immediately give notice, as in other elec-

tions, for a new election, specifying the office to be filled thereby and the ward, if a councilman, in which the poll is to be opened.

1. The *powers* of a board of canvassers of a city election are only *ministerial* under this section; it is not competent for them to hear *evidence* as to irregularities at an election, 59 Ind. 152. *Mandate* lies to compel them to canvass the vote and issue a certificate, 39 Ind. 488. The proper mode of attacking the validity of an election is by mandate, 34 Ind. 425.

2. The certificate serves the purpose of a commission. The result of the election need not be entered of record in the journal-book, though such is the usual course.

3. For *contest*, see §§ 4756 to 4768.

Election Certificate.

The undersigned, inspectors for the general election held in and for the city of ———, State of Indiana, on the ——— day of ———, 18—, hereby certify that the result of said election was as follows, to wit:

Name of person voted for.	For what office.	Whole number of votes.	Person having highest number of votes.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

We, therefore, declare that, according to the above statement, the result of the election is as follows:

That for the office of mayor of said city ——— ——— was duly elected.
That for the office of clerk thereof ——— ——— was duly elected, etc.

(Signed)_____

Certificate of Tie Vote.

To the Common Council [or, Board of Trustees] of the City [or, Town] of ———:

The undersigned, inspectors of the general election held in the city [*or*, town] of ———, State of Indiana, on the ——— day of ———, 18—, for the election of officers of said city, hereby certify that for the office of clerk A. B. and C. D. had an equal and the highest number of votes for said office, to wit:

A. B., ... ———.
C. D., ... ———.

_____
Inspectors.

Journal-Book Entry for Special Election.

Whereas, an election for city officers was held in this city on the ——— day of ———, 18—; and,

Whereas, it appears by the certificate of the election inspectors thereof, duly certified to this council, that A. B. and C. D. received an equal and the highest number of votes for the office of clerk of this city; therefore,

It is hereby ordered that a special election be held in this city between the

hours of 6 a. m. and 6 p. m., on the ——— day of ———, 18—, for the purpose of electing a clerk of this city; such election to be held at the usual voting places, due notice thereof to be given by the clerk by publication for ten days in the ——— *Daily Argus*, to wit:

In Precinct Number One, Ward Number Six. At the Court House, etc.

Notice for Special Election.

To the Voters of the City of ———:

Notice is hereby given that at the general election held in said city on the ——— day of ———, 18—, for the purpose of electing officers thereof, A. B. and C. D., as appears by the certificate of the election inspectors of such election, duly certified to the common council of said city, received an equal and the highest number of votes for the office of clerk of said city; and that on the ——— day of ———, 18—, said common council ordered that a special election be held at the usual voting places of said city, on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., for the purpose of electing a clerk of said city for the next and ensuing term thereof, viz.:

In Precinct Number One, Ward Number Six, at the Court House, etc.

Notice is therefore given that, at the places and upon the time aforesaid, polls at said places will be opened for the purpose aforesaid.

Clerk of the City of ———.

Journal-Book Entry of Result of Election.

Be it remembered, that at an election held in this city on the ———day of ———, 18—, for the purpose of electing officers [*or*, to fill the vacancy in the office of councilman for Ward Number ———,] for said city for and during their several ensuing terms, [*or*, for the term of office of said councilman,] it appears from the certificate of the election inspectors filed in the clerk's office that A. B. was duly elected mayor; C. D. was elected clerk, etc.

Sec. 3048. Notice to persons elected. 13. It shall be the duty of the clerk of such municipal corporation, within twenty-four hours after filing the certificate of the board of inspectors in his office, as provided in the preceding section, to notify, either by personal service, or by leaving a copy of the same at the usual place of residence, each and all of the persons elected to fill the said offices.

This notice is required when a vacancy is filled. A written notice handed to the person elected, or perhaps left at his place of residence, is a personal notice. The notice must be in writing, for it constitutes the officer's commission. See § 3095. The oath is upon the back of the commission, § 3095, and form.

Certificate and Notification of Election.

To A. B.:

You are hereby notified, and I hereby so certify, that at the election held in the city of ———, State of Indiana, you were duly elected clerk of said city for the next and ensuing term, as appears from the certificate of the election inspectors now on file in my office.

In testimony whereof, I have hereunto set my hand and the seal of said city of ———, this ——— day of ———, 18—.

X. Y.,
Clerk of the City of ———.

[See, also, § 3095 for a notice and form of oath.]

Sec. 3049. Penalty for refusal to serve. 14. Any person thus elected who shall not, within five days after being notified by personal service of the same, take and subscribe the oath of office before some proper officer, and file the same with the clerk of such corporation, shall be deemed as having refused to serve, and shall forfeit, for the use of such city, therefor the sum of ten dollars, provided he is not prevented from so doing by sickness or unavoidable accident; which forfeiture shall be recoverable on complaint filed in the name of the city against the party so failing to serve.

The amount of the *penalty* assessed is paid into the general fund of the city. The *process* is a summons. The oath must be in writing, filed with the clerk, § 3095. Unless taken, the officer can not justify, 1 R. I. 292; 7 S. & R. 387; 5 Whart. (Pa.) 541; but third person acting in good faith with him will be protected, 24 N. J. L. 409.

Complaint.

[*Caption.*]

The city of ——— complains of A. B. and says: That upon the ——— day of ———, 18—, at a general [*or*, special] election held in said city for the purpose of electing officers for said city [*or*, for the purpose of filling a vacancy in the office of mayor of said city], said A. B. was duly elected, and it was so declared by the board of inspectors of said election, mayor of said city for the next and ensuing term, a certificate of said election said board duly made out, signed and filed with the clerk of said city; and that within twenty-four hours after the filing of said certificate of election of said board of inspectors in the office of and with the clerk of said city, said clerk personally notified said A. B. that he had been duly elected mayor as aforesaid; but said A. B. did not within five days after having been so notified, nor has he at any time since such notification, taken and subscribed the oath of office of mayor of said city, and has not filed the same with the clerk of said corporation.

Wherefore said city demands damages in the sum of ten dollars, and prays for all other proper relief.

R. S.,
Attorney for the Plaintiff.

Form of Oath.

State of Indiana, County of ———, *ss.*

I, A. B., do solemnly swear [*or*, affirm] that I will support the constitution of the United States, the constitution of the State of Indiana, and that I will faithfully and impartially discharge the duties of the office of mayor of the city of ——— during my continuance in office. So help me God.

A. B.

Subscribed and sworn [*or*, affirmed] to before me this ——— day of ———, 18—.

C. D.,
Notary Public.

[For another form of oath see § 3095.]

Sec. 3050. Vacancies. 16. Vacancies in the office of mayor, city judge, clerk, or councilman, occurring in any manner, shall be filled by special election ordered by the common council, and conducted in the same manner as the annual elections therefor; and all vacancies in the other offices shall be filled by the common council.

1. A councilman elected to fill a vacancy is entitled only to hold the office during the unexpired term of his predecessor, 28 Ind. 248; and the same is true of all city offices, § 3050*c*.

2. See § 159 for *vacancies;* and § 156 for *abandonment*. The above section is practically *repealed* by §§ 3050*a* and 3050*b*.

3. The council can not order an election unless a vacancy actually exists, 113 Ind. 434. An office is vacant according to whether it is occupied by one who has a legal right to hold it and to exercise the powers and perform the duties pertaining thereto, 113 Ind. 434. An existing office without an incumbent is vacant, 7 Ind. 326. It is presumed that a term of office ended at the expiration of the time for which the officer was elected, though he may serve until his successor is elected and qualified. His acts after such time will be presumed unauthorized, unless it affirmatively appear that a successor was not elected or qualified, 73 Ind. 175. A vacancy may be filled without a judicial determination of the fact of vacancy, 19 Ind. 356.

4. *Resignations* of officers must be filed with the clerk, R. S. 1881, § 5557, clause 5. If a resignation is to take effect at once, it can not be withdrawn, even with the consent of the clerk, after it is filed, 43 Ind. 105.

5. If the council declare a vacancy when there is none, and appoint a person to fill it, the old officer acquiescing therein, the appointee becomes a *de facto* officer, and the fact that no vacancy existed can not be pleaded by his sureties in an action on his bond, 88 Ind. 324.

[1891, p. 33. Approved February 26, 1891, and in force June 3, 1891.]

Sec. 3050*a*. Vacancies, how filled. 1. All vacancies in the office of mayor, clerk, or councilman of any incorporated city occurring in any manner shall be filled by appointment by the common council of such city.

See § 3060 for large cities.

Sec. 3050*b*. Length of term. 2. Such appointee shall hold office until the election and qualification of his successor, who shall be elected at the next general election after such vacancy.

These sections modify § 3050, and almost repeal it.

Appointment.

Whereas, a vacancy has occurred in the office of mayor of this said city of ———, by the resignation [*or*, abandonment] of said office by A. B., [*or*, by the death of A. B.,] the duly elected and acting mayor thereof; therefore,

C. D. is hereby appointed mayor of this said city to fill said vacancy in said office until the next general election, and until his successor is elected and qualified.

[1 R. S. 1852, p. 512. Approved May 13, 1852, and in force May 6, 1853.]

Sec. 3050*c*. Term. 7. Every person elected to fill any office in which a vacancy has occurred shall hold such office for the unexpired term thereof. [R. S. 1881, § 5567.]

[1 R. S. 1852, p. 166. Approved June 9, 1852, and in force May 6, 1853.]

Sec. 3050*d*. Failure to give bond. 9. If any officer of whom an official bond is required shall fail, within ten days after the commencement of his term of office and receipt of his commission or certificate, to give bond in the manner prescribed by law, the office shall be vacant. [R. S. 1881, § 5527.]

To create the vacancy, ten days must elapse after the actual receipt of the commission, or there must be a failure to receive it, under such circumstances

as show, either that the person does not intend it, or, by his own act, intends to postpone the time of giving bond, 27 Ind. 496; 99 Ind. 312; 100 Ind. 489; 7 Ind. 204. The mere failure to file the bond does not *ipso facto* amount to a vacation of the office; and at any time before action is taken to have a vacancy declared, the person elected may file his bond and assume the office, 8 Ind. 134; 10 O. 51; 33 Ala. 674.

[R. S. 1852, p. 512. Approved May 13, 1852, and in force May 6, 1853.]

Sec. 3050*e*. Oath, rights, and duties of appointee. 6. A person temporarily filling a vacancy shall give such bond, take such oath, have the same rights, and perform the same duties as the officer whose place he fills. [R. S. 1881, § 5566.]

[1881, p. 14. Approved and in force March 8, 1881.]

Sec. 3051. Large cities. 1. Any city incorporated under the laws of the State, and having a voting population of fifteen thousand votes or more, as shown by the poll-books of any general state election, shall be governed by a common council and board of aldermen.

There is no city in the State to which this statute is now applicable. It formerly applied to Indianapolis; but that city is now governed by the act of 1891.

Sec. 3052. Councilmen. 2. Such city shall be divided, by the common council, into wards containing as nearly as possible equal numbers of voters. No ward shall contain less than six hundred voters, nor shall any city be divided into more than twenty-five wards; and each ward shall be entitled to one councilman, who shall be elected on the first Tuesday in May, in the year 1881, and shall serve until the first day of January, 1884; and whose successor shall be elected on the second Tuesday in October, 1883, and biennially thereafter, and whose term of office shall be two years from the first of January next following, and until his successor is elected and qualified.

Sec. 3053. Aldermen. 3. Any such city shall be divided by the common council into five aldermanic districts, formed of an equal number of contiguous wards; and two aldermen shall be elected in each district, who shall be freeholders in the district which they are elected to represent, and one of whom shall be elected on the first Tuesday in May, in the year 1881, and who shall serve until the first day of January in the year 1884, and until his successor is elected and qualified. On the second Tuesday in October, 1883, and biennially ever after, there shall be elected two aldermen from each aldermanic district, whose term of office shall begin on the first day of January after such election, and who shall serve for two years, and until their successors are elected and qualified. In case of vacancies in the board of aldermen, the person elected to fill such vacancy shall serve only the unexpired term of his predecessor. Any member of the board of aldermen may, by seven votes, be expelled for malfeasance in office, but not a second time for the same offense: *Provided*, That

each alderman elected on the first Tuesday in May, 1880, shall hold his office until his successor is elected and qualified.

Elections under this section are governed by the general election law of 1889, § 4710*m*. *Filling vacancy*, see 28 Ind. 248, and § 3050*a*.

Sec. 3054. Legislation—Elections. 4. Concurrent action of the common council and board of aldermen shall be necessary for the passage of any ordinance, order, resolution, or motion for the appropriation of money or for the government of such city. For the appointment of such officers and boards as are appointed from the members of the common council, and required or authorized by act of the general assembly or ordinances of the city, the common council and board of aldermen shall meet in joint convention, in the council chamber, on the first Friday evening after the first annual meeting of the common council, at eight o'clock, and shall proceed to the election of such officers and boards by ballot, and such joint convention may adjourn from time to time until its work is completed; and all such officers and boards so elected shall serve during their term of office as councilmen, and until their successors are elected and qualified. And for the appointment of all other officers, commissioners, trustees, and boards required or authorized by act of the general assembly or ordinances of the city, the common council and board of aldermen shall meet in joint convention, in the council chamber, on the second Monday evening in November after the first annual meeting of the common council, and shall proceed to the election of such officers, commissioners, trustees, and boards by ballot; and such joint convention may adjourn from time to time until its work is completed. All such officers, commissioners, trustees, and boards, so elected, shall serve for two years from the first day of January after their election, and until their successors are elected and qualified, unless sooner removed according to law. *Provided*, That no member of the board of aldermen shall be elected to serve on any board elected by such joint convention.

This section does not authorize the creation of a "fire board," empowered with the duties of the chief of the fire department, to the exclusion of such chief, 100 Ind. 15. The joint action of the two houses are necessary to remove an officer, 18 Bull. 340; 9 Bull. 175. The two bodies in joint session constitute one assembly, and a majority of the total number of members in both bodies form a quorum, 29 N. H. 213; 44 N. H. 465; 10 Wend. 612; 22 N. Y. 128.

Sec. 3055. Separate action. 5. The powers and duties of the common council, as defined in act of March 14, 1867, and subsequent acts, shall remain in force under this act, except that the concurrent action of the board of aldermen shall be required in all cases, except in regard to qualification of its members and its order of business, to give effect to its action; but all ordinances, orders, resolutions, or motions for the appropriation of money or for the government or regulation of such city shall originate in the common council; and upon all questions, except as herein provided,

the action of the common council and board of aldermen shall be separate and distinct. And no ordinance, resolution, or motion providing for joint committees of the two bodies shall be passed; and no ordinance, order, or resolution shall become the law or be operative, until it has been passed by both bodies, and been signed by the mayor and president of the board of aldermen, and promulgated according to law.

An ordinance which may *result* in the expenditure of money may originate in either house; to make its introduction, first, in the common council necessary, the expenditure of money must be *directly* involved, 39 O. S. 645. Thus, in the case cited, an ordinance designating the route for a street railway, and directing the clerk to advertise for bids to construct and operate it, was held not within the inhibition of a similar statute.

Sec. 3056. Officers—Election. 6. All officers of any such city elected on the first Tuesday in May, 1881, shall serve until the first day of January, 1884; their successors shall be elected on the second Tuesday in October, 1883, and biennially ever after, to serve two years, and until their successors are elected and qualified.

Sec. 3057. President of board. 7. A president of the board of aldermen shall be elected by the board at their first annual meeting after each general election; [and also a president *pro tempore*], who shall, in case of absence or disability of the president, perform all his duties.

Sec. 3058. Records—Journal. 8. The city clerk shall have charge of the books and records of the board of aldermen; and all meetings of the board of aldermen shall be public; and the minutes and records thereof shall be kept by a deputy clerk, appointed by the city clerk and approved by the common council and board of aldermen, and who shall keep a journal of all proceedings, and enter the ayes and noes on any ordinance, order, resolution, or motion, at the request of any two members.

Sec. 3059. Pay of members. 9. The common council and board of aldermen shall determine, by ordinance, the compensation to be paid the members of each body: *Provided*, That such compensation shall not exceed the sum of two hundred dollars per year to each person.

Sec. 3060. President of board, when acting-mayor. 10. In case of removal, death, resignation or non-election of mayor, the duties of the office of mayor shall devolve on the president of the board of aldermen until a mayor is chosen and qualified according to the provisions of this act.

The council now fill a vacancy in the office of mayor, clerk, or councilman, who holds until the next general election. § 3050*a* and § 3050*b*.

[1881 S., p. 108. Approved and in force April 15, 1881.]

Sec. 3061. Sewer tax and districts. 1. In all cities organized and incorporated under the general laws of this State, having a common council and board of aldermen, such common council and

board of aldermen shall have power to levy, and cause to be assessed and collected, in each year, a tax, to be designated as a sewer tax, on all property subject to state and county taxation in such city; and the cost of the construction, maintenance, or repair of any or all sewers or drains of an internal diameter of more than three feet may be paid out of such sewer tax. And such common council and board of aldermen shall also have power to create and divide such city into sewer districts; and the cost of the construction, maintenance, and repair of any or all sewers or drains in each district shall be paid out of the sewer tax of such district: *Provided, however*, That where a sewer or drain extends into or through more than one district, the cost of the construction, maintenance, or repair thereof may be paid out of the sewer tax of such districts, in such proportions as the common council and board of aldermen may direct. And such common council and board of aldermen shall have power to enact such by-laws and ordinances as may be necessary to carry into effect the powers herein conferred.

When the city is divided into districts, the sewer tax collected from that district must be kept separate in its collection. For sewers see § 3106, clause 43, and § 3151.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3062. Mayor's duties and powers. 17. It shall be the duty of the mayor to see that the laws of the State and the by-laws and ordinances of the common council be faithfully executed within such city. He shall be a conservator of the peace, and, as such, shall have, within the city limits, the power conferred upon justices of the peace for that purpose. He shall exercise supervision over subordinate officers, and recommend to the common council such measures as he deems for the public good. He shall sign all commissions, licenses, and permits granted by the common council; and he shall perform such other duties as the nature of his office and the interests of the city require. He shall have the custody of the corporate seal; and may take and certify, under the same, the proof and acknowledgment of deeds and other instruments in writing, which shall be good in any court in this State without further authentication; he may also take and certify depositions and affidavits, and the same shall have a like force and effect as if taken by a justice of the peace. He shall hold a city court every day, Sunday excepted, at a place to be furnished by the common council; while sitting as such court, he shall have exclusive jurisdiction of all prosecutions for violation of the by-laws and ordinances of the city and township in which such city is situated. He shall have, within the limits of said city, the jurisdiction and powers of a justice of the peace in all matters, civil and criminal, arising under the laws of this State; and for crimes and misdemeanors, his jurisdiction shall be co-extensive with the county in which such city is situated: *Provided*, That, in trials before him, he shall have power to adjudge imprisonment as a part of his sentence, not ex-

ceeding thirty days, in the city or county prison. In all actions in the city judge's or mayor's court, either party may have a trial by jury, a change of venue to a justice of the peace in such city, and an appeal to a court of competent jurisdiction, under the same restrictions and in the same manner as in a justice's court; except that in cases where the mayor has exclusive jurisdiction no change of venue shall be allowed. The same rules of pleadings and practice shall be observed in the city judge's or mayor's court that are in a justice's court. The mayor shall give bond, payable to the State of Indiana, in any penal sum not less than three thousand dollars, to be approved by the clerk of the circuit court, with freehold security, conditioned for the faithful performance of his duties as mayor and all other duties herein required, and file the same with the clerk of the circuit court within the time directed by law for justices of the peace. All fines and penalties collected by him shall be paid into the city treasury within one month after the same shall have been received by him, in the kind of funds so received, except when otherwise directed by acts prescribing the duties and powers of justices of the peace; in which case he shall pay all fines and forfeitures collected by him for violation of the penal laws of the State into the county treasury, in the same manner and under the same restrictions that justices of the peace are required to do.

1. As to mayor's bond, see also § 3095. For *prosecutions* under city ordinances, see § 3066, *notes*.

2. The authority of the mayor as a *conservator of the peace* is limited to the boundaries of the city, 44 O. S. 137.

3. The power to exercise *supervision* over a subordinate officer does not give him authority to remove him.

4. The clerk is entitled to have access to the corporate *seal* for the purpose of authentication, see § 3068. The mayor's use of the seal is only as mayor and not as a justice of the peace; consequently on an appeal from a conviction for a violation of the criminal laws of the State, the transcript need not be authenticated by the seal of the city. In such a prosecution he acts as a justice of the peace, 64 Ind. 226.

5. The mayor signs the commissions of all officers elected by the common council. For the election of such officers, see § 3098.

6. The mayor formerly had exclusive *jurisdiction* of all cases brought for violations of city ordinances, notwithstanding the act authorizing the election of a city judge, 50 Ind. 569. But the act of 1891 changed this rule, see § 3206. His civil jurisdiction is limited to the city, 103 Ind. 80. He may try a bastardy action, 16 O. S. 624. His criminal jurisdiction runs throughout the county, 13 Ind. 538; 14 Ind. 93.

7. For *imprisonment*, see § 3067, *note*.

8. The *practice* before the mayor in civil actions is governed by the act relating to justices of the peace in civil proceedings. See R. S. 1881, §§ 1431 to 1572; 103 Ind. 80; in criminal actions by the act relating to them in criminal proceedings, see R. S. 1881, §§ 1606 to 1647.

9. The attorney general (acts 1889, p. 126, § 9; El. Sup. § 1805) may examine his docket and collect *fines* received by him as justice and not paid over within the time required by law; so the county superintendent may also do likewise. See § 4435. Fines received by him for violations of city ordinances go to the general city fund, except when assessed for certain immoral crimes, when they go to the trustees of the Home for Friendless Women. § 6246.

10. He has no power to receive a sum of money in lieu of *bail*, unless expressly authorized by a statute so to do, but, if he does, and the money is declared forfeited and is paid into the treasury, it can not be recovered back by the depositor, 41 O. S. 602; 1 O. C. C. 289.

11. The mayor has power to punish one committing a *contempt* of his court while in session, 46 Ind. 537.

12. If he declines to grant a *change of venue* in a criminal case when a proper affidavit for it is filed, his judgment of conviction will not be void, 26 N. E. Rep. 762.

Report of Fines by Mayor.

State of Indiana, ——— *County, ss:*

I, ———, mayor of the city of ———, in and for ——— County, Indiana, hereby certify that the following fines were collected by me from the ——— day of ———, 18—, to the ——— day of ———, 18—.

Names of Plaintiffs.	Names of Defendants.	Amount.	
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Witness my hand and seal, this ——— day of ———, 18—.

_____ [Seal.]
Mayor of the City of ———.

State of Indiana, ——— *County, ss:*

I do solemnly swear that the within is a true account of all the fines collected by me from the ——— day of ———, 18—, to the ——— day of ——— 18—; so help me God.

_____

Subscribed and sworn to before me, this ——— day of ———, 18—.

_____
Treasurer.

SEC. 3063. Docket fees. Vacancies. 18. The mayor or city judge shall keep a docket, as justices of the peace do. And, in the case of the absence of such mayor or city judge from the city for the space of five days or more, or of inability, in consequence of sickness or other cause, for a like period, he shall, prior to such departure in the first case, and at the expiration of five days in the last case (if his inability continue), deposit, or cause to be deposited, his docket with any justice of the peace within said city; and such justice shall, during such absence or inability, be vested with and exercise all the judicial powers and authority of said mayor or city judge, and be entitled to his fees and emoluments therefor. The mayor or city judge shall be entitled to the same fees as justices of the peace. In case of vacancy in the office of mayor or city judge, by death, resignation, or otherwise, the council shall cause his docket to be placed in the hands of some justice of the

peace in said city, who shall act as and have all the judicial powers and authority of such mayor or city judge, until the vacancy can be supplied by special election; and the official bond of such justice shall embrace all his official acts in such capacity: *Provided*, That all fees herein provided for the mayor or city judge shall be paid to such mayor or city judge for the use and benefit of such city; which fees the mayor or city judge shall pay into the city treasury, once in every three months, for the benefit of the general funds of said city. The mayor or city judge shall draw no salary from the city treasury until he shall have filed with the city clerk or auditor a relinquishment and transfer to such city of all taxable fees allowed him by law in cases cognizable before him for alleged violations of the ordinances or by-laws of such city. In any city containing a population of less than ten thousand, the mayor may, at any time, with the consent of the common council, deposit his docket with any justice of the peace of such city, who shall thereupon act as, and have all the judicial powers and authority of such mayor during such time as the mayor may continue such docket in the hands of such justice.

1. By the *deposit* of the mayor's *docket* with a justice of the peace, the latter possesses all the jurisdiction of the former, in addition to that of his own. The fact of the possession of the mayor's docket by a justice of the peace is conclusive of his authority to act in the absence of the mayor from the court-room where the trial is being held. The authority of such a justice is limited to the mayor's "judicial" powers; and does not otherwise authorize him to act as mayor, even in case of a vacancy in the office. Usually the mayor has two, and sometimes three, dockets. One for criminal cases; the second for city penal cases, and the third for civil cases. How docket is kept, see R. S. 1881, § 1437. Under R. S. 1881, § 5779, a mayor is not entitled to a docket furnished by the county commissioners. The mayor may *resume* his docket at any time.

2. The usual practice is for the common council to allow the mayor the fees he receives as a part of his salary, when the latter is fixed. See § 3105. Unless it is so done he is liable on his bond to the city for them. See 17 O. S. 48 and 7 O. S. 237.

Release of Fees.

To All Whom it May Concern:

I, C. D., mayor of the city of ———, in the State of Indiana, hereby relinquish and transfer to said city all taxable fees hereafter assessed, and which is allowed me by law as such mayor in all cases cognizable before me during my term [*or*, during the year ending on the ——— day of ———, 18—,] for violations of the ordinances and by-laws of said city.

Consent to Transfer of Docket.

This council hereby consents that C. D., mayor of this city, may deposit his docket with A. B., a justice of the peace of this city during the remainder of said C. D.'s term of office [*or*, so long as said C. D. may see fit to permit it to so remain with said A. B.].

Order placing Docket in Justice's possession.

Whereas C. D., on the ——— day of ———, 18—, resigned the office of mayor of this city; therefore,

It is hereby ordered that the clerk of this city take possession of his docket, and of all papers appertaining thereto, and place the same in the hands and possession of A. B., a justice of the peace of this city.

[1875 S., p. 31. Approved March 12, 1875, and in force August 24, 1875.]

SEC. 3063*a*. Fees of justice of peace and mayor. 24. The fees of the justices of the peace shall be as follows:

For each summons or *capias*, twenty-five cents.

For every examination on a criminal information on oath, fifty cents.

For swearing each witness, five cents.

For every warrant in a criminal cause, twenty-five cents.

For every trial, on complaint for unlawful detention of lands or tenements, one dollar.

For issuing every attachment for contempt, twenty-five cents.

For taking acknowledgment of a deed or power of attorney, twenty-five cents.

For order for removing pauper from county, fifty cents.

For certifying description of a boat adrift or an estray, thirty-five cents.

For warrant of certificate of appraisement, twenty-five cents.

For taking and certifying depositions, twenty-five cents.

And for each one hundred words therein, ten cents.

For each process required by law, and not herein enumerated, twenty-five cents.

For every writing or record not herein provided for, every one hundred words, ten cents.

For every trial on default, twenty-five cents.

For every trial, where defense is made, one dollar.

For each additional day occupied in trial, after the first, one dollar.

For certifying copies of all proceedings, for each one hundred words, ten cents.

For entering continuances, ten cents.

For every bond or recognizance, twenty-five cents.

For every venire for summoning a jury, twenty-five cents.

For subpœnas for witnesses, to include all called for at one time, twenty-five cents.

For each transfer, assignment, or docket of judgment, twenty-five cents.

For issuing execution, twenty-five cents.

For each oath not herein otherwise provided, five cents.

For rendering every final judgment, twenty-five cents.

For trial of right of property and judgment, one dollar.

For swearing jury, ten cents.

For making up docket, for every one hundred words, ten cents.

For each writ of attachment against property, twenty-five cents.

For making return of fines, for each mile necessarily traveled, to be paid out of the county treasury, ten cents.

For transmitting papers in case of appeal, twenty-five cents.

For writing an affidavit, twenty-five cents. [R. S. 1881, § 6555.]

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3064. Suits by city, what averments unnecessary. 89. Whenever any suit shall be instituted by such city, it shall not be necessary to aver its corporate organization or the publication of its by-laws or ordinances, unless the same is contradicted by affidavit.

1. The production of certificate of the election inspector filed in the office of the clerk of the circuit court (§ 3035) is conclusive evidence of the incorporation of the city. § 3036, *note*.

2. It seems pretty clear that this section intended to dispense both with an averment of the incorporation of the city and proof of that fact, as well as proof of the publication of the ordinance under which the suit is brought to recover the penalty. The intent is, however, unhappily expressed. Until the defendent is brought into court, he has no right to file an affidavit, and then only in answer to a complaint already on file. When it is then filed, it certainly can not be the intention of the legislature that the complaint must be amended in that particular, by the insertion of an averment of incorporation or publication of the ordinance. Evidently, when then filed (and it can not be done before), it has alone reference to *proof* of the fact of organization or publication. See 25 Ind. 490. A defense predicated upon the invalidity of the ordinance must be brought forward by the defendant, 114 Ind. 77.

3. Proof of the publication may be made by the affidavit of the printer, 29 Ind. 354; or the papers containing it may be produced, their publication being shown by any one cognizant of that fact, 36 Ill. 301. And even a note upon the record of an ordinance, where such record is admissible in evidence, stating that it had been duly published, is *prima facie* evidence of the fact of publication, 36 Kan. 740. See § 3100. If publication was made by posting, then the marshal of the city, or any one cognizant of that fact, may be called as a witness to prove it; or the marshal's affidavit may be used, 29 Ind. 354. Proof of publication may also be made by showing that the ordinance had been regularly published by the city in book or pamphlet form, § 3100; but the production of such a book is not sufficient evidence of the publication of an ordinance, where the publication has been denied under oath.

Affidavit of Non-Publication.

State of Indiana, County of ———. *ss.*

The City of ——— *vs. A*——— B———. *No.* ——.

A. B., defendant herein, upon his oath says, that the ordinance referred to in the complaint filed in this case and upon which this prosecution is based, is not valid nor in force for the reason that it was never published two weeks consecutively before the commencement of this action in any newspaper printed in said city, after its adoption by the common council thereof; nor was there ever any written or printed copies of said notice posted up by the marshal of said city, nor by any one else, in five public places in each ward of said city for two weeks before the commencement of this action; nor did said common council ever make proclamation of the passage of said ordinance and cause, before the commencement of this action, copies of the same to be posted up at five public places, or at any five places therein, in each of the wards of said city; nor was said ordinance ever published by said city, for a period of two weeks before the commencement of the action, in any book or pamphlet form.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

———

Notary Public.

Sec. 3065. Suits against railroads—Process—Judgment. 91. In all prosecutions against any railroad or other incorporated company for the violation of any ordinance of the common council of any city, a summons may issue against the company and may be served on the president, superintendent, secretary, treasurer, station agent, or general agent; and, upon the trial of the cause, judgment may be rendered against the railroad company for such penalty as may be adjudged; or the conductors or other agents of the company guilty of the violations may be arrested by warrant, and may be proceeded against personally as in other cases.

Sec. 3066. Actions for penalties. 19. All actions brought to recover any penalty or forfeiture incurred under this act, or ordinances made in pursuance thereof, shall be brought in the corporate name of such city. The process in every such action shall be a warrant; and the person named in such warrant shall be arrested, and retained in custody, or under reasonable recognizance, until the next sitting of the city court; and it shall not be necessary to file with the affidavit or complaint a copy of the ordinance or section thereof charged to have been violated, but it shall be sufficient to recite in the affidavit or complaint the number of the section charged to have been violated, with the date of its adoption; nor shall it be necessary to copy any part of the affidavit, complaint, or other pleadings in the record of the cause: *Provided*, That the mayor shall note upon his docket the parties to the action, the title to the cause, the filing of the complaint or affidavit, the issuing and return of process, and the judgment and proceedings had in the cause, and the satisfaction of judgment when paid.

The penalty can not exceed one hundred dollars, § 3155.

1. For power of the marshal to *arrest*, see § 3075, and notes. The statute does not require the mayor to direct the warrant to the marshal; it may be to a constable. So a justice of the peace acting as mayor may direct the process either to the marshal or a constable.

2. The ordinance can be enforced only in the way pointed out in this section. 36 Ill. 177; 4 B. Mon. 146; 32 N. J. L. 262.

3. The mayor had previously exclusive *jurisdiction* for the violation of city ordinances, notwithstanding the election of a city judge, 50 Ind. 569. See now § 3206.

4. The action is a *civil action*, notwithstanding a warrant is issued, 7 Ind. 688; 6 Ind. 281; 1 Ind. 38, 315; 1 B. 341; 34 Ind. 239; 58 Ind. 518; and all the offenders need not be joined, 19 Ind. 271; it is in the nature of a tort. The same rules of pleading and practice obtain as in the court of a justice of the peace in civil cases, 34 Ind. 239; 58 Ind. 518.

5. All *defenses*, except the statute of limitation and matter in abatement, may be made without pleading them, 60 Ind. 1.

6. So long as the *complaint* complies with this section, it need not be more full nor technical than in a civil action commenced before a justice, 34 Ind. 239. The particular manner of its adoption need not be averred nor proved, 107 Ind. 231. Both the section violated and the one containing the penalty must be set out, 34 Ind. 392; 90 Ind. 258. The complaint is sufficient if it informs the defendant of the nature of the cause of action, and is explicit enough that a judgment thereon will constitute a complete bar to another action for the same cause, 63 Ind. 468; 84 Ind. 276; 105 Ind. 540. Uncertainty in the statement of the charge must be taken advantage of on a motion to make the complaint more

explicit, 63 Ind. 468; 58 Ind. 518. The facts supposed to constitute a violation of the ordinance, which is to say, the acts done or omitted by the defendant, must be stated with as much certainty as is required in a pleading in an action commenced before a justice of the peace, 84 Ind. 276; 94 N. C. 880; 13 Oreg. 587; 17 Wis. 26. Merely stating that the defendant violated a certain section of a certain ordinance is not sufficient, 56 Ind. 305; 36 N.J. L. 283; 82 N.C. 532. It is not necessary that the complaint negative an exception in a *proviso* of the ordinance; this being a matter of defense, 16 Mich. 472; see 38 N.J.L. 69; 33 N. J. L. 213; 1 Harr. (N. J.) 133.

7. It is not necessary to *set out the whole ordinance*, nor its title, but only the section alleged to have been violated, with the date of the passage of the ordinance, 25 Ind. 490; 114 Ind. 77; 125 Ind. 6; 26 N. E. Rep. 807; (*contra*, before present statute, 22 Ind. 192); the substance of the section need not be set out, 63 Ind. 468.

8. The court can not take *judicial notice* of the passage of the ordinance, 22 Ind. 192; 23 Ill. 90; 19 Mo. 551; 30 Ala. 538; 14 La. Ann. 303; nor of its contents; but both the passage and the contents of the ordinance may be shown by the production of the regular ordinance book after its identification, § 3099; 64 Ind. 31, 40; or by the production of the book of ordinances purporting to have been printed by authority of the council, § 3100; by a certified copy, § 3068; or by a sworn copy, 25 Ind. 490. The city may call on the *defendant to testify*, and if he declines to be sworn, judgment at once, for the full demand, must be entered against him. See R. S. 1881, § 1480. But it can not by ordinance change the rules of evidence, 1 McCord (S. C.), 333; 4 Scam. (Ill.) p. 78.

9. *Appeal* lies to the circuit court under the same restrictions as if the action had been begun before a justice, 34 Ind. 239; and on such appeal the same rules of pleading and practice prevail as prevailed below, 103 Ind. 80. The mayor has no incidental power to execute an appeal bond, unless authorized by the council, 21 Me. 50.

10. The defendant can not *enjoin* the collection of a judgment on the ground that the date of the passage of the ordinance and the section violated are not given, 49 Ind. 329; nor because of the invalidity of the ordinance, 3. O. C. C. 545.

11. On appeal to the circuit court the complaint may be *amended* (as well as in the mayor's court); but it is not error in that court to refuse to allow an amended complaint to be filed if it does not state a good cause of action, 58 Ind. 268. The *conviction* must be for the same offense for which the defendant is prosecuted, 30 Ga. 517.

12. The city is not liable for *costs* made before the mayor, whether it win or lose the case, see § 3078; but it is for all costs made by it on appeal if it win, and for all made by both it and the defense there if it lose the case, 34 Ind. 48.

13. An *appeal* lies to the *supreme court* from the circuit court, and not to the appellate court, 26 N. E. Rep., however small may be the amount involved, if the validity (15 Ind. 447) of the ordinance is involved; but if its validity is not attacked, and the amount involved is less than fifty dollars, exclusive of interest and costs, the appeal will probably be dismissed. So even where the validity of the ordinance is attacked, that court would probably decide no other question involved in the record, unless the amount involved, exclusive of interest and costs, exceeded fifty dollars. See R. S. 1881, § 632. See under the code of 1852 and amendments, 60 Ind. 327; 53 Ind. 483; 50 Ind. 28; 45 Ind. 234; 44 Ind. 476; 24 Ind. 321; 19 Ind. 84; 6 Ind. 46; 1 Ind. 38; 7 B. 135; 5 B. 168.

14. If the *damages* are *excessive*, a motion for a new trial for that reason must be made, 31 Ind. 230; which the mayor can grant.

15. *Strangers*, as well as citizens, are liable to the penal ordinances of a city, 1 Ind. 265; 4 O. 427. Every one is bound to take notice of its provision, 1 Levinz. 16; Cro. Car. 498.

16. If the officers of the city by any positive acts induced the action of the adverse party complained of, and it would be inequitable to permit the city to stultify itself, by retracting what they had done, the city will be *estopped* to enforce the penalty of the ordinance, 94 Ill. 67; 64 Ill. 447; 79 Ill. 39; 81 Ill. 156.

17. The *corporate existence* of the city can not be attacked, 24 Ill. 22; 20 Ill. 197; 23 Ill. 437; 10 Ia. 234; 50 Ill. 39; 46 Ill. 9; 95 Ind. 70.

18. Ordinances are *construed* by the same rules that statutes are, 68 Cal. 294; 52 Ind. 411; courts will give to them a reasonable construction, 2 R. I. 154; 5 Cush. 438, 442; 6 Bing. N. C. 314, 323; 7 B. & C. 838; especially in view of their inartificial character, 26 Conn. 406. They are not tested by the strict rules applied to penal statutes, 4 La. Ann. 335; 14 La. Ann. 318; unless highly penal, 1 B. Mon. 261, (but see 79 Mo. 210.)

19. Citizens of the city are competent *jurors;* and are not disqualified by reason of their interest as mere citizens thereof, 9 O. 290; 1 Gray, 475; 31 Mo. 369; 5 Mass. 90; 25 W. Va. 266; 1 Rich. (S. C.) L. 364; 73 Ga. 484.

20. The mayor can *instruct the jury.* Thornton on juries, § 466.

21. If the accused has been arrested and given bail for his appearance on the day set for trial, the trial may probably proceed in his absence; but if he has not been arrested, he can not be brought into court by an ordinary *summons.* The process must be a warrant; but a voluntary appearance will be sufficient.

22. A person arrested can not be detained over eighteen hours, except upon a commitment by the mayor. See § 3075.

Complaint for Violation of City Ordinance.

Before the mayor of the City of ———.

The City of ———, *vs.* ..... } Complaint for..... } .....

The State of Indiana, ——— County, ss:

The city of ——— complains of ———, and says that on the ——— day of ———, A. D. 18—, at and in said county and State, and within the corporate limits of the said city of ———, the said defendant, then and there being, did then and there [*describe with reasonable certainty the act done or omitted that it is deemed to have been a violation of the ordinance*] contrary to and in violation of section [*or*, sections] ——— of an ordinance of said city, adopted by the common council thereof on the ——— day of ———, 18—, to the damage of said city, ——— dollars. Wherefore the plaintiff demands judgment for ——— dollars.

———
City Attorney.

——— being duly sworn upon h— oath says, that the matters and things alleged in the foregoing complaint are true as ——— verily believes.

———

Subscribed and sworn to before me this ——— day of ———, A. D. 18—.
[City Seal.]

———
Mayor of the City of ———.

Warrant.

The State of Indiana, ——— County, ss:

City of ——— to the City Marshal, Greeting:

You are hereby commanded to arrest ——— and bring ——— forthwith before me at my office, to answer the charge of having, on the ——— day of ———, 18—, at and in said county and State, and within the jurisdiction of said city, committed a violation of section [*or*, sections] ——— of an ordinance of said city, adopted by the common council thereof ———, as said city has complained on the oath of one ———, and have then and there this writ.

Dated this ——— day of ——— A. D., 18—.

[City Seal.]

———
Mayor of the City of ———.

Marshal's Return.

I have arrested the above named defendant and have his body in court.
This ——— day of ———, 18—.
Marshal's fee, $———.

———
Marshal.

INDORSEMENT ON COMPLAINT.

No. ———

City of ———

vs.

Complaint filed in mayor's office this ——— day of ———, A. D. 18—.

———, Mayor

———, City Attorney.

Fine,	
Mayor's fees,	
Marshal's fees,	
Attorney's fees,	
Witness fees,	
Total,	$
Credit,	
Bal. due,	$

Recognizance Bond with Oath.

City of ———, ——— *County, State of Indiana:*

We, ——— and ———, severally acknowledge ourselves bound to the State of Indiana in the sum of ——— dollars each, if the said ——— shall not appear before the mayor of the city of ———, at the city court room in said city, on the ——— day of ———, 18—, at 9 o'clock in the forenoon of said day, to answer a charge of ——— at the county of ———, and State of Indiana; and abide the judgment of said court, and not depart thence without leave of said court.

Witness our hands and seals, this ——— day of ———, 18—.

———[Seal.]
———[Seal.]
———[Seal.]

Attest:

———
Mayor.

State of Indiana, ——— *County, ss:*

I, ———, being duly sworn, upon my oath say that I am the owner in my own name and right of real estate, free from all incumbrances, situate in ——— County, State of Indiana, of the value of ——— dollars.

Witness my hand, this ———day of ———, 18—.

———

Subscribed and sworn to before me, this ——— day of ———, 18—.

———
Notary Public.

[Sureties not owning real estate can be accepted.]

Commitment.

State of Indiana, ——— *County*, *ss*:

To the Keeper of the Jail in said County, Greeting:

Whereas, ———, of the county aforesaid, has been arrested on the oath of ——— for ———, and has been brought before me, ———, mayor of the city of ———, of said county [*or*, one of the justices of the peace in and for said county], for trial, which trial has been necessarily postponed, by reason of ———.

Therefore, I command you [in the name of the State, to receive the said ——— into your custody, in the jail of the county aforesaid, there to remain until discharged by due course of law.

Given under my hand and seal, this ——— day of ———, 18—.

[City Seal.]

Mayor [*or*, J. P.]

[See also § 3067, *forms*. City seal is unnecessary when a justice commits.]

Failure to Find Bail—Examination Had—Felony.

State of Indiana, ——— *County*, *ss:*

To the Sheriff of ——— *County, Greeting:*

Whereas, ——— has been arrested and brought before me, ———, mayor of the city of ———, charged with the crime of ——— at said county, and the said ——— having had an examination before me and found guilty, and having failed to find bail in the sum of ——— dollars, as required by me for his appearance from day to day of the present term of the ——— ——— circuit court, now then, you are therefore commanded to confine him in the county jail until discharged by law.

Dated this ——— day of ———, 18—.

[City Seal.]

Mayor [*or*, J. P.]

Failure to Find Bail—Examination Waived—Felony.

State of Indiana, ——— *County*, *ss:*

To the Sheriff of ——— *County, Greeting:*

Whereas, ——— has been arrested and brought before me, ———, mayor of the city of ———, charged with the crime of ——— at said county, and the said ——— having waived an examination before me, and having failed to find bail in the sum of ——— dollars, as required by me for his appearance from day to day of the present term of the ——— ——— circuit court, now then, you are therefore commanded to confine him in the county jail until discharged by law.

Dated this ——— day of ———, 18—

[City Seal.]

Mayor [*or*, J. P.]

Subpoena.

Mayor's Office, City of ———.

State of Indiana, ——— *County*, *ss:*

To the Marshal of the City of ———, *Greeting:*

You are hereby commanded to summon ——— to personally be and appear before me, at my office, in the city of ———, on the ——— day of ———, 18—, at ——— o'clock —. m., of said day, to testify on the part of the ——— in

a certain action now pending before me, wherein the city of ——— is plaintiff, and ——— defendant; and have you then and there this writ.

Given under my hand, this the ——— day of ———, 18—.

[City Seal.]

———

Mayor [*or*, J. P.]

Venire.

——— *County*, ——— *Township*, *ss:*

The State of Indiana to ———, *the Marshal of the City of* ———, *said County* [OR, *Constable of said Township*]:

You are hereby commanded to summon ——— ——— ——— ——— qualified voters of said township, to appear before me, mayor of the city of ——— [*or*, a justice of the peace], at my office therein, at ——— o'clock, —. m., on the ——— day of ——— next, to serve as jurors in a case pending before me, in which the city of ——— is plaintiff, and ——— defendant, then and there to be tried; and this said jurors shall in no wise omit. And have you then and there this writ, with your doings thereon.

Given under my hand and seal, this ——— day of ———, 18—.

[City Seal.]

———

Mayor [*or*, J. P.]

Docket Entry.

State of Indiana, ——— *County*, *ss:*

The City of ———, *vs. A*——— *B*———. *No.* —.

On the ——— day of ———, 18—, the above named plaintiff filed a complaint herein against said above named defendant, and thereupon a warrant was issued for his arrest, returnable forthwith, and delivered to the marshal of said city [*or*, to C. D., a constable of ——— township, of said county]; which warrant was returned the same day [*or*, on the ——— day of ———, 18—,] indorsed as follows: "I have arrested the within-named defendant and now have his body in court," signed by said marshal [*or*, constable]; and the defendant for answer says he is not guilty as charged.

Thereupon the parties being in court ready for trial, a jury was called consisting of twelve qualified voters of said city, to wit: ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— to whom the issue was submitted for trial [*or*, a jury being waived, the issue was submitted to the court for trial.] Trial had. C. D. and E. F. sworn and examined as witnesses for the plaintiff, and L. S. sworn and examined as a witness for the defendant. After hearing argument of counsel, the jury retired and returned the following verdict, viz.: "We, the jury, find the defendant guilty as charged, and assess his fine at $—," [*or*, "we, the jury, find the defendant not guilty," *or*, "and the court having heard all the evidence adduced, and being sufficiently advised in the premises, finds the defendant [*or*, not] guilty as charged in the complaint, and assesses his fine at $—.] It is therefore considered and adjudged that the plaintiff recover of and from the defendant $— and costs taxed at $—; and if the said fine and costs be not paid or replevied forthwith, said defendant be committed, not exceeding thirty days to the city [*or*, county] workhouse [of the county of ———, of State of Indiana,] [*or*, to the city prison of said city, *or*, to the ——— county jail,] and that he be required to pay the same by manual labor in said workhouse [*or*, on the streets and other public works of said city, under the control of the street commissioner [*or*, marshal] thereof,] at the rate of seventy-five cents [*or*, *when confined in workhouse*, one dollar] per day.

———

Mayor of the City of ———.

[1881 S., p. 174. Approved April 14, 1881, and in force September 19, 1881.]

SEC. 3066*a*. Crimes not punishable by city or town. 67. Whenever any act is made a public offense against the State by any statute and the punishment prescribed therefor, such act shall not

be made punishable by any ordinance of any incorporated city or town; and any ordinance to such effect shall be null and void, and all prosecutions for any such public offense as may be within the jurisdiction of the authorities of such incorporated cities or towns, by and before such authorities, shall be had under the State law only. [R. S. 1881, § 1640.]

1. This section is constitutional, 78 Ind. 316. It does not prevent a city from requiring liquor dealers taking out a city liquor license; nor from punishing them for not doing so, 90 Ind. 258, 262; 109 Ind. 466; 114 Ind. 77; but it does prohibit the city's passing an ordinance making it an offense to interfere with a policeman making an arrest, 115 Ind. 581. See, generally, 8 B. 361.

2. Relative to certain nuisances, an exception is created under R. S. 1881, § 2066, *proviso*.

[1867 p. 33. Approved and in force March 14, 1867.]

Sec. 3067. Imprisonment—Stay. 20. If the penalty or forfeiture in which judgment is obtained be not paid or replevied, the defendant may be committed, for any period not exceeding thirty days, to the workhouse of such city, or, if such city have no workhouse, then to the county prison of the county in which such city is situated; and in the latter case, it shall be the duty of the person having charge of such prison to receive such defendant and obey the judgment of the city judge's or mayor's court in reference to him or her. And in default of payment or replevy of such judgment and costs, the defendant, unless a female, may be adjudged and required to pay the same by manual labor in said workhouse, or on the street or other public works of said city, under the control of the street commissioner or marshal of such city; for which labor such defendant shall be allowed, on such judgment and costs, seventy-five cents per day. It shall be the duty of such street commissioner or marshal, or such other officer as the common council may direct, to work such defendant not less than six nor more than ten hours per day, according to the season, and each evening to return him to the custody of the keeper of such prison or workhouse. Upon the full payment, as aforesaid, of the judgment and costs, such defendant shall be fully discharged. And such street commissioner or marshal is hereby authorized and required to perform all the duties herein prescribed, and to use all proper means thereto; and the common council are hereby vested with full authority to pass by-laws and ordinances for the purpose of compelling the enforcement of such manual labor by such defendant, by the use of sufficient force and means as they may deem right and proper. The keeper of such prison or workhouse shall receive for the keeping, custody, and boarding of said defendant fifty cents per day, to be paid by such city upon the presentation of an itemized account therefor; and he shall receive only one commitment and one discharging fee. And such defendant may, at any time, replevy and pay such judgment and costs; and in case he

has performed labor under such judgment, he shall be entitled to a credit for the same to the amount of labor performed, and the balance may be paid or replevied as aforesaid.

1. This section is constitutional. The imprisonment is imposed for a failure to pay or replevy the judgment, and as a means of coercing such payment, and not as a part of the penalty for the violation of the city ordinance, 50 Ind. 28; 64 Ind. 155. Confinement, unless the defendant performs the requisite amount of labor, does not pay the judgment; that still remains in force and may be collected on an ordinary execution for the sale of property, 64 Ind. 155. A *female* may be imprisoned for a failure to pay; but can not be compelled to perform labor in payment of the judgment, 64 Ind. 155 (but see §§ 6240 to 6242, changing under certain conditions this rule). The defendant can only be confined *thirty days*, and those thirty days must be the thirty days immediately following the date of the rendition of judgment, even though the defendant escape and is not recaptured during such thirty days, 64 Ind. 155. (See note 3.) After the expiration of such thirty days, even in the case of an escape, the marshal can not arrest and confine the defendant, in order to enforce payment of the judgment, 64 Ind. 155.

2. Unless there is an adjudication to the effect that the defendant be required to pay such judgment in labor, he can not be compelled to do so, 64 Ind. 155; § 6229; and if compelled to work on the streets without such a judgment, he may maintain an action for false imprisonment against the officer compelling him to work, 67 Ind. 474.

3. If the defendant, however, is required by the judgment to work out the fine and costs at the rate of one dollar per day (§ 6229), he can be required to work out the full amount of such fine and costs at the rate per day provided for, though it may require a longer time than thirty days, unless otherwise paid, or replevied; and even though he escape for a time and fail to do any work, he may be retaken and compelled to work until he has paid the full amount of such fine and costs at the rate provided, however long it may take him to do so, 64 Ind. 155.

4. Touching the use of the county workhouse, see §§ 6227 to 6242.

5. By working the defendant upon its streets, the city does not become liable to the *city attorney* for his *fees*, 53 Ind. 508. The city is liable to the county for its *expense* of receiving, boarding, and discharging a prisoner from the *county jail*, 7 Ind. 688; but if placed there a short time before midnight and discharged a short time thereafter, the city is not liable for two days imprisonment, 31 Ind. 230. Fractions of days will be counted, but not as whole days, 80 Ind 45. Costs of confinement in workhouse, see § 6232.

6. The mayor can remit a sentence for good behavior only when the commitment is to a workhouse, § 6229.

Appeal Bond.

We, ——— and ———, acknowledge ourselves bound to the city of ——— in the penal sum sum of ——— dollars.

Witness our hands and seals, this ——— day of ———, 18—.

Whereas, said the city of ———, within thirty days last past, obtained judgment against ———, before ———, mayor of said city of ———, for ——— dollars and ——— cents, with costs taxed ——— dollars and ——— cents, and said ——— has appealed therefrom; now, if the said ——— shall prosecute his appeal to final judgment, and pay such judgment as may be rendered against him on such appeal, this bond shall be null and void, else in force.

_____ [Seal.]

_____ [Seal.]

Taken and approved this ——— day of ———, 18—.

_____

Mayor.

Certificate to Transcript.

I, mayor of the city of ———, of the State of Indiana, hereby certify that the foregoing is a full, true, and complete transcript of all the proceedings had before me in the above entitled case, as taken and copied from my docket.

Witness my hand and the seal of said city this ——— day of ———, 18—.

[City Seal.] ———
Mayor of the City of ———.

Mittimus for Workhouse.

Mayor's Office, City of ———.

The State of Indiana, ——— *County, City of* ———, *ss:*

To the Superintendent of the Workhouse, ——— *County, Greeting:*

Whereas, ——— has been this day tried before me, mayor of the city of ———, in the county and state aforesaid, upon a charge of ———, in a cause wherein the city of ——— was plaintiff, and the said ——— was defendant; and whereas, the said defendant was by me adjudged guilty of said charge, upon said trial, and for —— punishment I assessed that —— be imprisoned in the workhouse of ——— county, for ——— days, and also that ——— forfeit to the city of ——— the sum of $—— and judgment was rendered thereon for such sum, together with costs taxed at $——, and that —— stand committed to the workhouse of ——— county until such forfeiture and costs should be paid or replevied, and the defendant not having paid or replevied the same; Therefore, in the name of the State of Indiana, I command you to receive the said defendant into your custody, and that you obey the judgment in reference to the defendant.

Given under my hand and the seal of the city of ———, this ——— day of ———, A. D. 18—.

[City Seal.] ———
Mayor.

CITY COURT.

City of ———,
vs.

Offense:

COMMITMENT.

Fine, ...
Costs, ...
Total, ...
Cr., ...
Bal., ...

To .....
Days and until fine and costs shall be paid or replevied.

State Commitment.

Mayor's Office, City of ———.

State of Indiana, ——— *County, City of* ———, *ss:*

To the Superintendent of ——— *County Workhouse, Greeting:*

Whereas, ——— has been this day tried before me, ———, mayor of the city of ———, in the county and State aforesaid, upon a charge of ———, in a cause wherein the State of Indiana was plaintiff, and the said ——— was defendant; And, whereas, the said defendant was by me adjudged guilty of said

charge upon said trial, and for his punishment I assessed that he be imprisoned in the workhouse of ——— county for ——— days, and also that he forfeit to the State of Indiana the sum of $———, and judgment was rendered thereon for such sum, together with costs, taxed at $———, and that he stand committed to the workhouse of ——— county until such forfeiture and costs should be paid or replevied, and the defendant not having replevied the same: Therefore, in the name of the State of Indiana, I command you to receive the said defendant into your custody, and that you obey the judgment in reference to the defendant.

Given under my hand and the seal of the city of ———, this ——— day of ———, A. D. 18—.

[City Seal.]

Mayor.

Execution against Principal and Replevin Bail.

Mayor's Office, City of ———.

The State of Indiana, ——— *County, ss:*

To the Marshal of the City of ———:

Whereas, on the ——— day of ———, 18—, the city of ——— obtained judgment against ———, as appears on my docket, for ——— dollars and ——— cents, together with costs taxed at $———, on said day. And, whereas, on the ——— day of ——— 18—, ——— became replevin bail for the stay of execution on said judgment for ——— days from the rendition thereof.

You are therefore commanded to make the same, and accruing costs, together with interest on said judgment from the date thereof, by levy and sale of the goods of said ———, if any be found in your county subject to execution; if not, then, without delay, levy this execution upon the goods of said ———, replevin bail, and sell the same as you are directed to sell the goods of the original judgment defendant, and make return thereof within six months from date.

Given under my hand and official seal this day of ———, 18—.

[City Seal.]

Mayor.

EXECUTION.

Docket ——. Page ——. No. ——.

vs.

Repl. Bail.

Issued —— day of ———, 18—.
Returnable —— day of ———, 18—.

Judgment, ... $
Interest to date of issue, . . .
Costs " " " " . . .
Total —— day of ———, 18—.
Int. to —— day of ———, 18—.
Accruing costs, ———, 18—.

Received on this execution, $——— in full satisfaction of same, and paid said sum into court, ——— day of ———, 18—.

Marshal.

This execution came to hand ——— day of ———, 18—, at — o'clock — m.

Marshal.

Levy.

Came to hand ———, 18—, — m. In obedience to this writ I have this ——— day of ———, 18—, levied upon ———.

Execution against Principal.

Mayor's Office, City of ———.

State of Indiana, ——— *County, ss:*

To the Marshal of the City of ———:

Whereas, the city of ——— obtained judgment, against ———, as appears on my docket, for ——— dollars and ——— cents, with —— per cent. interest from the ——— day of ———, 18—, together with costs taxed at $———, on said day.

You are therefore commanded to make the same by levy and sale of the goods of said ———, if any may be found in your county, subject to execution; and make due return thereof within six months from date.

Given under my hand and seal this ——— day of ———, 18—.

[City Seal.]

Mayor of the City of ———.

Marshal's Sale.

By virtue of an execution to me directed from the mayor's court I will expose at public sale, at the city court room door in the city of ———, ——— county, Indiana, on the ——— day of ———, 18—, between the hours of 10 o'clock a. m. and 4 o'clock p. m., on said day, the following property to wit: ———, to be sold as the property of ———, to satisfy said ——— in my hands in favor of the city of ———, said sale without relief from valuation or appraisement laws.

Marshal of the City of ———.

———————, 18——

By———————Deputy.

Sec. 3068. Clerk's duties—Evidence—Fees. 21. The clerk shall have the custody of all books and papers belonging to such municipal corporation. He shall make record of all proceedings of the common council, whose meetings it shall be his duty to attend. He shall countersign and register all licenses and permits, and all other official papers of the common council directing acts to be done or duties performed; and he shall do all other things required by the common council and pertaining to his office. Copies of papers and transcripts from the records, certified by him under the corporate seal, shall be evidence of the matters therein contained in all courts of this State; and he shall be entitled to receive therefor, except when otherwise ordered by the common council, the same fees that are allowed to the clerk of the circuit court for similar services.

1. See § 3097. The clerk has no power to administer an oath. If the clerk omit to make a proper entry of the proceedings of the council, the council can order him to make a *nunc pro tunc* entry of them, 64 Ind. 319; 13 Allen, 129; 22 Mich. 104; 59 Ala. 371; 49 Mich. 69; 77 Ind. 542. But an entirely new council can not correct errors and omissions in the record of a former council of whom none of the old members constitute a part of such new council, 1 Met. (Ky.) 295. Nor can the clerk correct the record after the council has approved it, 1 Dill. Muncp. Corp. § 297. If the record has been so carelessly and imperfectly kept as not to show the adoption of an ordinance for improvements, and there is no written evidence in existence, parol evidence may be admitted to show

that certain work has been done by authority of the city, by proving the passage of a resolution of the council, the appointment of a committee to make the expenditure, their report after the work done, and their report to the council, 1 Ind. 281; 12 Ind. 467; 17 Ind. 175; 36 Ind. 90. See 41 Pa. St. 68. If the record is *destroyed*, its contents may be shown by *parol*, 36 Ind. p. 99; 25 Ind. 512.

2. The original proceedings of the council as kept by the clerk is also admissible in *evidence*, 64 Ind. 31, 40; so is a sworn copy, 25 Ind. 490; R. S. 1881, § 467. See also R. S. 1881, § 462.

3. It is sufficient if the record is made under the supervision of the clerk, 11 Vt. 402. He can not use his own seal in place of the seal of the city, 43 O. St. 178. Clerk's *deputy*, § 3043.

4. The records of the proceedings of the common council are admissible to show that the street or highway in question is under the control of the city, 73 Ind. 460.

5. The mayor signed city warrants in blank, and the clerk filled them out in favor of himself, when the city owed him nothing, presented them to the city treasurer and drew the money thereon. This was held to be a breach of his official bond, and his sureties liable for the amount thus received by him, 45 Ind. 10.

6. The office of clerk is not an office under the State; and one elected justice of the peace may hold it during the term for which he was elected, 52 Ind. 599.

Caption of Transcript.

Be it remembered that upon the days hereinafter mentioned the following proceedings had, held and transacted by the common council of the city of ———, State of Indiana, as appears from the records thereof, to wit:

Clerk's Certificate.

State of Indiana, County of ———, *ss:*

I, A. B., clerk of the city of ———, of said State, do hereby certify that the above and foregoing is a full, true, and complete transcript of all the proceedings had and held before the common council of said city in the matter of the opening and extension of ——— street, as appears of record from the proceedings of said council, in Record number ——, on pages ——, now in my official possession as said clerk [*or*, is a full, true, and complete copy of the bond of C. D., filed by him as his official bond as treasurer of said city, in my office on the ——— day of ———, 18—, and approved by the common council of said city on the ——— day of ——— 18—, which bond is now in my official possession as said clerk].

In testimony whereof I have hereunto set my hand and the seal of said city of ———, this ——— day of ———, 18—.

[City Seal.]

Clerk of the City of ———.

No.——— | General License. | Issued, ———, 18—.
License, .. $——— | | Expires, ———, 18—.
Issue Fee, $——— | City of ———.

To All Whom it May Concern:

Office of the Mayor of the City of ———, 18—.

This license is granted to ——— to ——— in the city of ———, having paid the license of ——— dollars therefor, conformably to the provisions of an ordinance entitled "An Ordinance relative to the Licensing and Regulating of certain Extraordinary Trades and Establishments, in the ———," passed ———.

This license to be in force until the ——— day of ———, 18—, provided the holder hereof shall conform to the requirements of said ordinance, and of such

other ordinance or ordinances as are now or may hereafter be in this behalf ordained.

In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of the city of ——— this ——— day of ———, 18—.

Attest: _____

_____
Clerk.

Market Lease.

No. ——.

Office of City Clerk, ———, *Indiana*, ———, 18—.

To All Whom it May Concern:

Whereas, ——— did on the ——— day of ———, 18—, pay into the city treasury of the city of ——— the sum of ——— dollars and ——— cents, evidenced by the receipt of the treasurer of said city, No. ——, and on the ——— day of ———, 18—, said lessee paid into the city treasury the sum of ——— dollars and ——— cents, being balance in full for year ending May 31, 18—, by receipt No. ——, on file in my office; now, therefore, the said city of ——— hereby leases to the said ———, No. ——, located in said city, until the ——— day of ———, 18—, subject, however, to the provisions of the ordinances governing and regulating the public markets in said city. This lease is made subject to cancellation by the city on thirty days' notice being given to the lease-holder.

1st Installm't, $_____

2d Installm't, $_____

Total, $_____

In testimony whereof, I have hereunto set my hand, and caused to be affixed the seal of the city of ———, this ——— day of ———, 18—.

_____
Mayor.

Attest: _____

City Clerk.

Dog License.

No. ———. *Office of City Clerk*, ———, *Ind.*, ———, 18—.

To All Whom it May Concern:

This license is granted ——— to keep one ——— male dog in the city of ———, said person having paid the license of —— dollar therefor, conformably to the provisions of an ordinance entitled "An ordinance to regulate the keeping of dogs in the city of ———, requiring the licensing, checking, and registering of all dogs owned, kept or harbored within the said city, and imposing fines and punishments for violations thereof," ordained and established June 18, 1878.

This license will be in force until the ——— day of ———, 18—, and is not transferable.

[City Seal.]

_____
Mayor.

Attest: _____

City Clerk.

Sec. 3069. Orders—Clerk's duties. 22. The clerk shall draw all orders upon the treasury of such city, which shall be signed by the mayor and countersigned by him; but no order shall be drawn upon the treasury except upon an allowance made by the common council, or when the same is fixed by law or the ordinances of such city. He shall keep a register of orders and a register of receipts issued or received by him, so that no two receipts or orders shall bear the same number; the said books, to be styled a "Register

of Orders" and a "Register of Receipts," shall be furnished by the common council at the expense of the city. He shall properly file and keep documents belonging to said city and appertaining to his office; and deliver the same, with all other things belonging to his office, to his successor, as soon as such successor is qualified. The clerk shall, in proper books to be furnished him, open separate accounts for special and general funds, expenditures, salaries of officers, contracts for work, or other service done for the city, exhibiting therein all receipts, disbursements, and appropriations upon each account, and the whole amount of receipts and expenditures in one general account.

1. In cities having a voting population of over 16,000 it is unlawful for the clerk to draw a *warrant* upon the treasury if at the time there is no money in the city treasury, see § 3123; nor can the council, under such circumstances, make an appropriation. See § 3124. In cities of less than 16,000 of a voting population the warrant, even though there be no money with which to pay it, can be drawn on the treasurer; and, if not paid, it will draw interest. See §§ 3081, 3082.

2. *Suit* may be maintained upon such *warrant* by the holder, and he need not proceed by mandate. It is not necessary in order to entitle the holder to recover that he show that the city treasurer had funds with which to pay it, or that he indorsed it "not paid for want of funds" (§ 3081). Such an order constitutes a *prima facie* cause of action. "They are not negotiable in such a sense as to be protected in the hands of *bona fide* holders against defenses." The property of a city can not, however, be taken upon execution to pay them, 86 Ind. 184. If the holder owes the city anything, that may be set off against the warrant; but if such debt consists of taxes, it must be shown that he had property within the city liable to taxation for city purposes. A plea of want of consideration is good, 86 Ind. 235; 9 Ind. 224; 6 Kan. 510; 19 Ind. 540; 100 Ill. 537. The holder or transferee may sue in his own name, 56 Me. 315; 19 Ia. 199, 248; 65 Mo. 105.

3. Touching *constitutional limit* of indebtedness, and issuing warrants thereafter, see § 220, *note*.

Warrant.

$100.00. ———, 18—.

To the Treasurer of the City of ———:

Pay to A. B., or bearer, one hundred dollars on account of salary as city attorney.

Attest : Mayor of the City of———.

Clerk.

Register of Orders.

No.	Date.	To whom issued.	For what issued.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Register of Receipts.

No.	Date.	From whom received.	On what account received.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Clerk's Monthly Report.

To the ———, *Common Council* [*and Board of Aldermen*]:

Gentlemen: I herewith submit an itemized statement, showing the amount of orders drawn on the city treasury during the month of ———, 18—, viz.:

Accounts.	Amount. *Dols.*	*Cts.*	Totals. *Dols.*	*Cts.*
Board of Health,				
Bridges,				
City Assessor's Department,				
City Civil Engineer's Department				
City Dispensary,				
City Hall,				
City Hospital [and Branch],				
City Treasurer's Percentage,				
Cisterns,				
Elections,				
Fire Department,				
Fountains and Driven Wells,				
Gas,				
Incidentals,				
Interest on Bonds,				
Judgments and Costs,				
Markets,				
Market Master's Fees,				
Parks,				
Police,				
Printing,				
Salary,				
Sewers,				
Station House,				
Street Improvements,				
Street Openings and Vacations,				
Street Repairs,				
Taxes Refunded,				
Water Rent,				
.....				
.....				
.....				
For School Fund,				
For Sewer Fund,				
For Sinking Fund,				
.....				
SPECIAL FUNDS:				
From Special Sewer Fund,				
Total,				

City Clerk.

Sec. 3070. Duplicate tax-list. 23. The clerk shall, annually, between the first Monday of June and the fifteenth of November, make out a duplicate list of taxes assessed in such incorporated city in the same manner that duplicate lists of taxes are made out by county auditors, and shall cause a copy of such duplicate list to be delivered to the city treasurer on or before the fifteenth day of November of each year; and in all matters pertaining to the making up of such duplicate tax-lists, and the assessment of taxes thereon, and in the manner of entering property returned delinquent for taxes, he shall be governed by the laws defining the duties of county auditors, so far as the same may be applicable, and not otherwise herein provided; and he shall deliver the same, with a warrant, under the corporate seal of said city, attached thereto, to the treasurer of said city, directing him that of the goods and chattels of all and every person named in said duplicate, and of all persons whose names may be added thereto by him, he shall cause to be made, by distress and sale if necessary, the amount of tax charged against each of said persons named in said duplicate, and make report of his doings in the premises by the third Monday in March next following, and make full return, report, and final settlement thereof by the first Monday of August next following.

1. See § 3087.

2. By the express provisions of the tax law of 1891, cities are governed by its provisions, § 3160 (which is a part of the tax law of that year). Wherever a provision in that law differs from this and the following section concerning city taxation and such provision, or any part of it, can be applied to the city, it must be followed. The clerk must make a copy of the tax-list and give such copy to the treasurer, retaining one for himself. The law contemplates the clerk's making out two original tax-lists, and his retention of one of them for himself, § 6422.

3. The tax duplicate now need not be turned over before the last day in December, § 6421. Clerk *making tax duplicates* and assessing taxes. § 6417 to 6421; correcting *errors*, § 6421; *omitted property*. § 6416; *crediting* treasurer, § 6428; *delinquent list*, § 6457; *advertisement of tax sale*, § 6458; acts as *clerk of sale*, § 6463; *issues certificate of sale*, § 6464; *redemption from tax* sale, §§ 6466 to 6478; *conveyance of land* sold for taxes, § 6479 to 6490; *fees* on tax sales, etc., § 6482.

4. The tax *duplicate* and the *warrant* attached thereto constitute the city *treasurer's authority* for the enforcing of the payment of taxes by seizure and sale of property, and, taken together, confer on him the same power to seize and sell personal property as is conferred by an execution issued to a sheriff; but the duplicate, unaccompanied by the warrant, is not sufficient, 30 Ind. 133. See § 6424, *notes*.

5. A complaint to *enjoin* the collection of taxes must show, not mere irregularities in making the assessment, but that such assessment is illegal and void. Averring that the council fraudulently and corruptly placed all the real estate in the city on the duplicate, without stating the particulars constituting the fraud, is not sufficient; so it is not sufficient to allege that certain lots assessed were not taxable, unless it is shown that they do not lie within the city limits, 61 Ind. 29. Illegal taxes may be enjoined. 22 Ind. 262.

Warrant for Collection of Taxes.

State of Indiana, County of ——, *ss:*

The City of —— *to A. B., Greeting:*

You, as treasurer of said city, are hereby commanded, out of the goods and chattels of each and every person named in the within and annexed tax duplicate, and of each and every person whose name may hereafter be lawfully added thereto either by the clerk of said city or by yourself, to cause to be made, by distress and sale, if necessary, the amount of tax charged against each and every of said persons named in the annexed duplicate, and of each and every person whose name is hereafter lawfully entered thereon, and make report of your doings in the premises by the third Monday in April next; and make a full return and report, and final settlement thereof, by the first Monday in November, 18—. And this shall be a full authority to you in said premises.

Witness my hand and the seal of said city this —— day of ——, 18—.

[City Seal.]

C. D.,
Clerk of the City of ——.

Sec. 3071. Assessor's duties. 24. Each city assessor shall, on or before the first Monday in June of each year, unless otherwise directed by the common council, make and deliver to the city clerk of his city, in tabular form and alphabetical order, a list or lists of the names of all persons, companies or corporations in whose names any personal property, moneys, credits, or other taxables shall have been by him listed in his city; on which list or lists he shall enter separately, in appropriate columns, opposite each name, the several species of personal property and taxables required by law to be taxed for state and county purposes, as attested by the person required to list the same, or as determined by the assessor; and he shall also make a separate list of such other property or thing as the common council in their ordinances direct to be specially taxed; the columns shall be accurately added up. And in every case where any person whose duty it is made by law to list any personal property or other taxables for taxation for the state and county purposes shall refuse to make out and return the lists of personal property and taxables, the assessor shall enter, in an appropriate column, the words "refused to list"; and in every case where the person required to list personal property for taxation shall refuse to take and subscribe the oath or affirmation required of him by this act in regard to the truth of his statement, the assessor shall enter, in an appropriate column, the words "refused to swear"; and in every case where any person required to list property for taxation shall have been absent, or unable from sickness to list the same, the assessor shall enter opposite his name the word "absent" or "sick." Said assessment shall be completed at the time above indicated, and return made thereof to the clerk of the city, unless, by an order of the common council, further time be given him. He may, with the concurrence of the common council, appoint one or more assistants, who shall be sworn, in like manner as other officers, to well and faithfully perform the duties thereof. Such assessor and assistants shall have the same powers,

and be subject to the same provisions of the same laws as the assessor of personal property for state and county purposes. But if, at any time, any town or city adopting this act shall have no assessor except the one elected on the first Tuesday in May, as aforesaid, then it shall be lawful for the common council to appoint an assessor, who shall qualify as if elected, and shall assess for the year commencing on the first Monday in January next preceding such appointment; and the assessor elected at a regular election as aforesaid shall assess, as herein required, for the year commencing on the first day of January following such election. Such assessor shall, at the time he is required by this act to make return of taxable property to the city clerk, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, corresponding with his list or lists, and the clerk shall carefully preserve the same in his office.

1. The office of city assessor has been abolished, § 3160. The assessment of the township assessor, in which the city lies, becomes the assessment for the city, see 61 Ind. 29; 62 Ind. 421. This section is now obsolete.

2. The general state tax law, §§ 6330 to 6396, must be followed so far as applicable, §§ 3160, 3263. *Correction of errors*, § 6390; *omitted property*, § 6393; *bond*, § 6374; *refusal* of person *to take oath*, § 6341; *sickness* of tax-payer, § 6342.

3. The office of assessor in cities containing a population over 70,000 has also been abolished. Acts 1885, p. 13. The general rule is that the assessment must be returned by the first Monday in June, but it is discretionary with the council to extend the time; and such discretion may be exercised either before or after that time, so far as the validity of the tax is involved, 23 Ind. 423.

Sec. 3072. Assessor's duties. 25. Each city assessor shall annually (except when the real estate is appraised), at the time of taking lists of personal property, also take a list of all real estate situate in his city that shall have become subject to taxation since the last previous listing of property therein, with the value thereof, estimated agreeably to the laws regulating the duties of appraisers of real estate; and all new improvements, buildings, or other structures of any kind, the value of which shall not have been previously added to or included in the valuation of the lands on which such improvements have been made or structures erected; and shall make return thereof to the city clerk at the same time that he is required by this act to make return of personal property; in which return he shall set forth the parcel of real property on which each of such improvements shall have been made or structures erected, and the true value added to such parcel of real estate by the making of such improvement or the erection of such structure. And the additional sum which it is believed the land on which the improvement shall have been made or structure erected will sell for at private sale, in consequence thereof, shall be considered the value of such improvement or structure. And in case of destruction by fire, flood, or otherwise, of any improvement, building, or structure of any kind which shall have been made or erected pre-

vious to the last valuation of the land on which the same shall have been added to any former valuation of such land, the assessor shall determine, as nearly as practicable, how much less such land would sell for at private sale in consequence of such destruction, and make return thereof to the city clerk, as in this section before provided in relation to improvements made or structures erected.

This section is now obsolete.

SEC. 3073. Civil engineer's duties. 27. The civil engineer shall prepare plans, specifications, and estimates, when thereunto directed by the common council, of proposed public improvements, and shall superintend the opening of streets and the preservation of the true lines thereof, and perform all other duties appertaining to his office when directed by the common council. And such engineer shall have exclusive jurisdiction to survey, determine, establish, and perpetuate the lines and corners of all lots, blocks, parcels of land, and subdivisions thereof, within the limits of such city. He shall make a record of all such surveys, as the county surveyor is now required to do; and such record, or certified copies thereof, shall have the same force and effect as the record of surveys made by the county surveyor has; and from all such surveys an appeal may be taken, as provided for appeals from surveys made by the county surveyor: *Provided*, That when the city authorities have once established the grade of any street or alley in the city, such grade shall not be changed until the damages occasioned by such change shall have been assessed and tendered to the parties injured or affected by such change, and such damages shall be collected by the city from the party or parties asking such change of grade in the manner provided for the collection of street improvements.

1. Under this section, when the city has once established the *grade* of a street or alley, it can not be *changed* until damages have been assessed and tendered, 50 Ind. 151; 100 Ind. 242, 545; 107 Ind. 404; 113 Ind. 425. But the *proviso* does not apply where a town has established the grade of a street and then such town is changed into a city. In such a case the city may change the grade of the street as established by the town without paying damages, 88 Ind. 428. The council can make a change of grade at any time, and pay the damages occasioned by the change out of the general revenues of the city, 34 Ind. 140. This section applies to property outside the city, 33 Ind. 435. But a city is not liable, in making the first grade of a street, to *consequential* damages, 36 Ind. 90, S. C. 10 Am. R. 12; 36 Ind. 522; 88 Ind. 428; 119 Ind. 1; 108 Ind. 7; 123 Ind. 250; nor in improving or repairing the street, 23 Ind. 381; 19 Ind. 326; 12 Ind. 516; 79 Ind. 491, S. C. 41 Am. R. 618; nor for consequential damages caused by a change of grade previous to the enactment (1867) of this proviso, 17 Ind. 267; nor for them since its enactment. Such damages do not fall within the provision of the constitution providing that before private property can be seized or taken the damages occasioned thereby must be first paid or tendered, 100 Ind. 242 (citing 17 Ind. 267; 14 Ind 399; 36 Ind. 90, S. C. 10 Am. R. 12; 19 Ind. 326; 75 Ind. 241, S. C. 39 Am. R. 135, Cooley on Const. (5 ed.) 252, 673, *note* 1); 119 Ind. 1. If there is a change causing both consequential and other damages, the person damaged may maintain an action against the city to recover the amount of his damages, 113 Ind. 429; 100 Ind. 242; 51 Ind. 151; 123 Ind. 250; without resorting to an injunction to prevent them, or demanding their assessment, 107 Ind. 404. But for the assessment the lot owner must proceed according to the statute, 36 Ind. 522.

2. To give a cause of action there must be a legal injury and resulting damages. An illegal change of grade causes an injury, but if it cause no damages no action will lie. "The injury must be special, and not merely such as the public may suffer, for a private person can not recover damages for the unlawful obstruction or destruction of a highway unless he has suffered special damages." Lowering an alley so as to cut off access to an abutting lot is a special damage, where the grade has been previously established; and it is not necessary that the lot owner should have made improvements with reference to the first grade to entitle him to recover damages resulting from the change; but the fact that improvements have been so made may augment the damages, 113 Ind. 425.

3. A lot owner, whose lot is damaged by a change of grade, can maintain only one action for damages; he can not split his cause of action, but must recover all damages past and present, in one action, 113 Ind. 425; 112 Ind. 542; 103 Ind. 314.

4. The *kind of grade* referred to in the proviso "is a grade established in pursuance of some ordinance or order of the common council involving some general plan of improvement or grading of a street or specified portion thereof. And such grade, when established, must be approved and adopted in some way by the common council, and should be made a matter of record. The record of the survey establishing the grade should appear in the record which the civil engineer is required to keep, and the proceedings of the council should in some way, either by ordinance or resolution, show that the survey establishing the grade was authorized or approved, so as to make it authoritative. Until proceedings are had by the common council directing that the grade of a certain street or streets, or specified portions thereof, shall be established, or that a grade already established is approved and adopted in some authoritative way by the common council, it can not be deemed that the city authorities have once established the grade of a street, and improvements are made by lot owners subject to the right of the city to establish or change the grade without the assessment or payment of damages," 100 Ind. 545. And in a complaint for damages, on the theory that damages have been occasioned to the plaintiff by a change in the established grade of a street, it must be averred that a grade had been legally established, and that a change was made in the grade without first assessing the damages occasioned thereby, 123 Ind. 250.

5. Before an abutting lot owner can recover damages alleged to have been caused by a change of grade, he must allege and show the existence of a duly established grade by the city authorities at the time the improvements were made (if improvements are relied upon to augment the damages); that the improvements were made with reference to a grade so established, and that the city had changed the grade so established (or in case of an injunction, that the city is proceeding to change the grade so established) "without the assessment and tender of the damages so occasioned," 100 Ind. 545.

6. The records and files of the city pertaining to the establishment of a grade, should, in such an action, be produced in proof; and unless these are shown to have been lost or destroyed, no other proof is admissible, 78 Ind. 1; 6 Neb. 27; 100 Ind. p. 549. Certified (or sworn) copies are also admissible. See § 3068, *note*. The grade can not be proved, nor that one was established, by the declarations of the city's officers, 6 Neb. 27. So the ordinance of a city "requiring persons to construct sidewalks in conformity to the existing grade of the streets, and also requiring the city engineer, on application, to fix for such persons the grade on which their sidewalks should be laid, was a proper regulation to secure uniformity and safety in the sidewalks; but it can not be said that because this was required, and sidewalks were built and improvements made with reference to grades so fixed, the city was thereafter *estopped* from establishing a different grade for the street without the assessment and tender of damages; nor does the fact that the committee on streets, with the city engineer, directed the appellant where to place her sidewalk, estop the city," 100 Ind. 545.

7. Where the council directs that a plan of improvement be prepared, or a grade established, by the engineer, for a certain street, which is done and reported, and accepted, the action of the council will not be overthrown for want

of form; thus, "the survey and plan for the improvement of S. street by J. is accepted," is a sufficient *acceptance*, 78 Ind. 1. The action of the council in this matter need not be *published*, see 108 Ind. 208. The proceedings establishing a grade is not *void for uncertainty*, if the grades so established can be ascertained without difficulty, 49 Ind. 322; 109 Ind. p. 234.

8. If the engineer *refuse* to prepare plans or *to make estimates*, after ordered to do so, under § 3163, he may be compelled by mandate to do so, 96 Ind. p. 216. His duty is ministerial, 90 Ind. 567. It will be presumed that he prepared plans and specifications for street improvements, conformable to an ordinance in force, and had them on file in his office at the time the work is ordered where the order for the work refers to them as being there on file, 109 Ind. 206, 227.

9. *Removal* of engineer, see § 3043, *note*. *Estimating* and *apportioning* cost of grading street, § 3163, *note*.

10. Establishment of a grade is a legislative act of the council, and can not be delegated to the engineer. 21 Bull. 216; 4 Ohio C.C. 327.

Order for Establishment of Grade.

It is hereby ordered that the city civil engineer prepare a plan for the grading of so much of S. street of this city as lies between J. and L. streets.

Report of Plan.

To the Common Council of the City of ———:

I herewith submit a plan for the grading of so much of S. street as lies between J. and L. streets of said city, in accordance with your order of the ——— day of ———, 18—, to wit: [*Describe the grade.*]

A. B.,
City Civil Engineer.

Acceptance of Plan.

Whereas, on the ——— day of ———, 18—, this council ordered the city civil engineer to prepare a plan for the grading of so much of S. street of this city as lies between J. and L. streets; and

Whereas, said engineer, on the ——— day of ———, 18—, reported to his council such a plan; therefore

Such plan is hereby accepted by this council, and the grade of such street is hereby established according to the specifications of said plan; and the same is ordered to be recorded in the records of the office of said city civil engineer, and inserted in the records of this council.

Ordinance Establishing Grade.

AN ORDINANCE, NO. ——, TO ESTABLISH THE GRADE OF ——— STREET, FROM ——— TO ———.

Be it Ordained by the Council of the City of ———, as follows:

SEC. 1. That the grade of ——— street from ——— to ——— be and the same is hereby established as follows, viz: Commencing at ———, at an elevation of ——— feet above the established datum, thence along the top of the ——— curb, [*or*, center of road-bed] of said street, —scending at the rate of ——— feet in each one hundred feet for a distance of ——— feet to an elevation of ——— feet; thence —scending at the rate of ——— feet in one hundred feet for a distance of ——— feet to an elevation of ——— feet; etc., etc., and the ——— curb shall be on the same level with the ——— curb.

SEC. 2. This ordinance shall take effect, etc., etc.

[If one curb is to have a different elevation from the other, a separate grade should be fixed for each.]

Form of Estimate.

To the Common Council of the City of ———:

The following is an approximate estimate of the cost of improving ——— street.

Broken stone	Cubic yards	@	....
Catch basins, complete	Pieces	@	....
Concrete	Cubic yards	@	....
Coping	Square feet	@	....
Crossings	Lineal feet	@	....
Curbs, pattern	"	@	....
" "	"	@	....
Drain pipe....inch	"	@	....
" " .... "	"	@	....
" " .... "	"	@	....
" " .... "	"	@	....
Grading	Cubic yards	@	....
Gravel, screened	"	@	....
Gutters, flagging	Lineal feet	@	....
" flag and limestone	"	@	....
Inlets	Pieces	@	....
Lumber	Feet, B. M.	@	....
Man-holes	Pieces	@	....
Masonry, dry, ret, wall	Cubic yards	@	....
" " drain wall	"	@	....
" rubble, uncoursed	"	@	....
" " coursed	"	@	....
" squared stone	"	@	....
" brick	"	@	....
Paving with bowlders	Square y'rds	@	....
" " limestone	"	@	....
" "	"	@	....
Rebowidering (with new bowlders)	"	@	....
Rolling (....times)	"	@	....
Wellhole plates	Pieces	@	....
Advertising and superintending		@	....
.....			
.....			
Expense to property owners	Feet	@	....
Expense to city	"	@	....

Total cost.....

.....
City Civil Engineer.

[The above may be used as a convenient form for making an estimate when it is contemplated to improve a street. It is not necessary that such an estimate should be made, but it is occasionally done for information before imposing upon abutting lot owners the burden of making the improvement.]

[1 R. S., 1852, p. 469. Approved June 17, 1852, and in force May 6, 1853.]

SEC. 3073*a*. **Survey, prima facie evidence—Appeal—Proceedings.** 8. The survey of such surveyor shall be *prima facie* evidence in favor of the corners so established and the lines to run; but an appeal may be taken to the circuit court, within three years, and such court may reverse such survey. Upon such appeal being prayed for by any person, such surveyor shall, forthwith, transmit the papers in his hands touching the same, and copies of the field-notes in the case complained of, without requiring an appeal-bond; and such court, in the trial of such appeal, may receive evidence

of other surveys of the same premises, made by the same or other persons, either before or since the one complained of; and if such court shall decide against such surveyor, it shall enter an order for a resurvey, and such new survey may be made by any other competent person whom the court may designate, from whose decision an appeal may be had in like manner. [R. S. 1881, § 5955.]

1. It was held in Ashe *v.* Lanham, 5 Ind. 434, that the survey is *prima facie* evidence against the party at whose instance and in whose presence it was made; but in Mull *v.* Owen, 67 Ind. 95, (45 Ind. p. 477) it was held, that if such survey be conducted according to § 5950, and said party be present and assist, and express himself satisfied with the survey, he is estopped to dispute its correctness, as is also his vendee, who was present and had knowledge of the survey; while in Herbst *v.* Smith, 71 Ind. 44, it was ruled that such a survey was *prima facie* evidence during the time allowed for appeal, and conclusive afterward, and that any subsequent survey would not affect this result, 84 Ind. 244; 100 Ind. 463, see 107 Ind. 593, (see survey unauthorized by statute, 109 Ind. 366.)

2. On appeal the appellant has the *onus*, 50 Ind. 19. And if the surveyor do not send up the papers and copies required by this section, the appeal will be dismissed, unless it be perfected, 59 Ind. 427.

3. The court may *order a resurvey* and appoint a person to make it; but it can not order him how to do it, 89 Ind. 274. This section does not apply to a *private surveyor;* and no one is bound thereby unless present and acquiescing, or consenting that the survey could be made, and agreeing to stand by the result, 90 Ind. 93, 165, see 107 Ind. p. 593.

4. *Fees.*—The city surveyor is entitled to no *fees* unless he is establishing lines and corners at the request of private persons, and without an order of the council. His only compensation is his salary.

5. On appeal twenty years *exclusive possession* up to a line different from that established by the survey may be shown, 93 Ind. 201. The true lines may be shown by parol evidence, 107 Ind. 591; 93 Ind. 201.

6. The survey does not determine the right of title; and a new trial as of right can not be demanded, 118 Ind. 520.

7. The appeal is tried on the transcript sent up to the circuit court by the surveyor, and pleadings are unauthorized, 89 Ind. 274.

Prayer for an Appeal.

To the Civil Engineer of the City of ———:

I hereby request an appeal from the survey you made on the ——— day of ———, 18—, of the following described land, to wit: [*describe it,*] and ask that you transmit to the ——— circuit court the papers in your hands touching such survey, with certified copies of the field notes thereof.

A. B.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3074. Street commissioner's duties. 28. It shall be the duty of the street commissioner, under the direction of the common council, to superintend the streets, alleys, market-places, landings; the construction, repairing, cleaning, and lighting the same; the building of sewers and drains; the purchase of the necessary implements of labor, and the employment of laborers; and shall perform all the other duties incident to his office: *Provided*, He shall have no power to contract for any debt or liability against the city,

unless specially authorized so to do by an order, resolution, or ordinance of the common council, made in accordance with the powers vested in such council by this act.

1. While a street commissioner remains in office, the city council can not devolve his duties upon another, 59 Ind. 364. But he may be removed by a majority vote and his duties devolved upon the marshal, 32 Ind. 79; but when charges are preferred against him, a two-thirds vote is necessary, 32 Ind. 74.

2. Notice to a street commissioner of a defect in a street is notice to the city, 73 Ind. 367. The city is liable for his torts committed in the performance of work authorized by its corporate powers; as the building of a sewer entrusted to his supervision, 102 Ind. 372; 112 Ind. 542.

Street Commissioner's Monthly Report.

To the Common Council of the City of ———:

GENTLEMEN: I herewith report expenditures in the "Street Repair Department," for the month of ———, together with total expenditure to ——— the 1st, 18—.

Pay-rolls,	$———
Lumber,	———
Gravel,	———
Bowlders,	———
Sand,	———
Hardware,	———
Blacksmithing,	———
Broken stone,	———
Freight,	———
Fountain repairs,	———
Street sweeping,	———
Total expenditure for ———, 18—,	$———
Total expenditure per last report,	———
Total expenditure to ——— the 1st, 18—,	———

Respectfully submitted,

_____

Street Commissioner.

SEC. 3075. Marshal's duties and powers. 29. The marshal shall be the chief ministerial officer of the corporation. He shall be a conservator of the peace within his city, and shall arrest, without process, all persons who, within his view, shall commit any crime or misdemeanor or violate any ordinance of such city, take them before the mayor or other officer having jurisdiction of the offense with which such person is charged, and detain them in custody until the cause of such arrest has been investigated; suppress all breaches of the peace within his knowledge, hereby giving to him authority to call to his aid the power of the city; pursue and commit to jail all felons and persons guilty of misdemeanors or violations of the ordinances of such city. He shall execute and return all process directed to him by the mayor or city judge, or by order of the common council, either in person or by deputy; attend upon and preserve order in the mayor's court and in justice's court within his city, in all cases wherein he has served the writ or process to

bring such party into court; and, in addition to the powers herein vested in such marshal, he may, without any writ or order of attachment, confine any person or persons guilty of any offense against the penal laws of the State of Indiana or ordinances of such city in the city watch-house or prison, or county jail (if such arrest be made when the court having jurisdiction of the offense with which such person is charged shall not be open or in session), until there shall be an opportunity to bring such defendant before the mayor, if for violation of the ordinances of such city, or before a justice of the peace or mayor, if for violation of the penal laws of the State, which it is his duty to do at the earliest practicable time. But no person shall be detained in custody more than eighteen hours, unless by order of the mayor or a justice of the peace, upon affidavit and writ charging such person with some offense.

[1881 S., p. 109. Approved and in force April 9, 1881.]

SEC. 3076. Has constables' powers. 1. City marshals shall have, in addition to the powers they now possess, the jurisdiction and powers of constables in their respective counties.

1. *Service of process* in civil suits against the city may be made upon the city marshal, § 316, *city prison*, § 3106, clause 44.

2. An *arrest* is the taking of one person into custody by another to answer for a public offense, R. S. 1881, § 1640. A person not deprived of his liberty is not arrested, 50 Mich. 549. Words alone can not constitute an arrest. Any thing which brings a person under the actual control and will of another is an arrest, whether it is a voluntary submission to the words of arrest, a physical seizure of his person, or a locking in a room in which the arrested person is found, 22 Mich. 267; 21 Ala. 240; 8 Grenl. (Me.) 127; 1 Wend. 210. Merely laying hands on the offender, accompanied by words of arrest is an arrest, though he escape, 3 Allen, 495, R. S. 1881, § 1687.

3. The officer must *notify* the offender of his arrest, R. S. 1881, § 1688, 42 Me. 384; 10 Mich. 169; but if such offender knows the officer to be such, or by seeing his badge of office or uniform, 32 N. Y. 509; R. S. 1881, § 1688; or by his seizure while actually committing an offense, 19 O. S. 248, farther notice is not necessary. So the same is true if the accused is immediately pursued from the place of crime, 27 Cal. 572. Actual notice of arrest even dispenses with *reading the warrant* when the arrest is made by warrant, 55 Mich. 506; 6 Gray 350; 5 Harr. (Del.) 487.

4. In felonies the officer need not *show his warrant*, R. S. 1881, § 1688; though it were better to do so, but it is otherwise in misdemeanors and breaches of ordinances, if it can be done without the accused escaping. One sought to be arrested has a right to know whether the arrest is a legal one or not, 10 Mich. 169; 42 Me. 384; 6 Gray, 350.

5. *Violence* can not be used unless actually necessary, R. S. 1881 § 1689; 2 Tex. App. 20; 4 Tex. App. 175; 41 N. Y. 498; not even to the extent of taking the offender by the collar, if there is no resistance or attempt to escape, 3 Harr. (Del.) 568; nor beat him with a club, nor use violence of any kind, because of opprobrious words or abusive language, 80 Ga. 544. Nor use *handcuffs*, unless there is danger of an escape, 14 Minn. 385; but in this respect the officer is judge of the necessity for their use, and is not liable unless he clearly abuses his discretion, 2 Ired. L. (N. C.) 50; 71 Mich. 377.

6. He may arrest any one committing an offense in the presence of the mayor or other magistrate upon the latter's *verbal order*, where the offender is still in the presence of the mayor, although the offense was committed at a time when he was not present, 19 Ill. 242; 11 Grey 194; 52 N. H. 481.

7. A *warrant in due form*, issued by competent authority to him, is a complete protection to him, 2 Gray, 410; 33 N. J. L. 134. A warrant to be legal must be (1) issued by competent legal authority, (2) commanding the arrest of a certain person or more, (3) upon sufficient grounds stated therein, 10 Mich. 169. The person to be arrested must be named; and if it be for A. B. "*and five other persons* whose names are unknown," unaccompanied by a description of the unknown persons, the arrest of such five will be illegal, 114 Ind. 542. A *blank warrant*, signed by the magistrate, but filled up after the arrest, is void, 69 Ind. 111; 8 Tex. App. 545. The officer must himself take notice of the validity or invalidity of the warrant, and that it was issued upon legal cause duly shown. He is not, however, bound to know that the charge is technically accurate in form, 1 Conn. 40; 37 Me. 130; 10 Mich. 169; 13 Mass. 285. An informal warrant is a sufficient protection, 63 Ind. 112; 2 B. 294; 6 B. 163. The *first name* must be given, 7 Kan. 426; nor with a warrant for A can he arrest B, 8 Tex. App. 545; 6 Cow. 455; nor with one for "persons who are suspected," can he arrest, 114 Ind. 542; 1 Conn. 40; and even though he in all these instances arrest the persons actually sought, he will be liable to them civilly for an illegal arrest. If the name of the person sought to be arrested is unknown, he must be particularly described so that he can be identified, 10 Allen, 403; 7 Cow. 332.

8. He may call upon any one to aid him in making an arrest by warrant, R. S. 1881, § 1691; 63 Ind. 112; 43 Ind. 175; and if such person (unless a female) refuse, he is liable to prosecution, 10 Johns 84; 6 B. 277; 3 Ired. (N. C.) L. 20; 63 Ala. 93. If the officer's warrant is void, yet if the citizen does not know that fact, he will not be a trespasser by aiding the officer, 71 Mich. 377; 43 Ind. 175; 34 Vt. 69; 83 Ala. 60.

9. He may use all necessary *force* to accomplish the arrest; and if necessary, when resisted, he may even take the life of the person for whom he has the warrant issued for a violation of a city ordinance or offense against the State, 96 Mo. 165; 2 Abb. (U. S.) 265; see 107 Ind. 144; R. S. 1881, § 1689. In such an instance, if the person sought to be arrested kill the officer, it is murder, 61 Pa. St. 352; 36 Tex. 542; 107 Ind. 144; see 13 Crim. Law Mag. p. 173; and if he strike him, it is an assault and battery, 11 Ind. 471.

10. In order to make an arrest under a warrant or for a felony (not a misdemeanor, nor for a violation of a city ordinance) without a warrant on reasonable suspicion, or even to quell a riot or affray actually going on, he may *break open any door* of a house, and he is not bound to do so at his peril on the condition that the person sought must be in the house, R. S. 1881, § 1692; 1 Root (Conn.), 83; 1 N. H. 346; 14 B. Mon. 395. He may break open a door to liberate himself, R. S. 1881, § 1693; or upon the order of a magistrate present and commanding the arrest, although no warrant has been issued, 11 Gray, 194. He must, however, first *demand admittance*, stating the object thereof, 10 Cush. 501. He may even *search* the house if he reasonably believe the person sought is therein, and if he also reasonably believe he committed a felony, or has a warrant for him, and in order to do so may break open the door after demand and notice, 1 Allen, 587; 120 Mass. 190.

11. If it is impossible to otherwise arrest a *felon who flees*, he may kill him it is said to prevent his escape, 61 Pa. St. 352; but there are many cases (and a decided majority) which decline to follow so harsh a rule, 65 N. C. 327 (may in crimes of great personal violence); 1 Hill (S. C.) 327; 44 Tex. 128; 44 Tex. 128, 645; 2 Dev. (N. C.) 58; 5 Park (N. Y.) 234; 44 Ala. 41; see 13 Crim. Law Mag. p. 173.

12. He may arrest *without warrant* one whom he has good reason to believe guilty of a *felony;* and so long as he acts in good faith, he will be protected, even though no felony has been committed, 31 Ind. 422; 99 Pa. St. 63; 7 Mo. 236; 107 Ind. 144; 49 Ind. 56. He is not bound to wait and see if the suspected person can escape before he can procure a warrant, 5 Cush. 281; 3 Wend. 350. (By a felony is meant a crime punishable by confinement in the penitentiary, 8 B. 489; 7 B. 186; as petit larceny, 63 Ind. 376.) But before he can arrest a felon, without a warrant, there must be "a *reasonable ground of suspicion*, supported by circumstances, sufficient to warrant a cautious man in believing that the party is guilty of the offense," 99 Pa. St. 63; 49 Ind. 56; 31

Ind. 422. In another case it is said that "there must be a strong conviction from the circumstances, that the party arrested was the felon," 49 Ind. 396; and it is added: "The unlawful arrest of a free citizen finds no favor with courts, juries, or with the public at large, and if officers clothed with brief authority shall indulge in it as a luxury, they must expect to pay for it," 49 Ill. p. 399. The *governor's proclamation* will justify an officer in arresting a person whom he has good reason to believe is the person described in it, 6 Humph. (Tenn.) 63; even instructions and *information by telegraph* have been held sufficient, 16 Fed. Rep. 93; or a *warrant* in the hands of *another officer*, 10 Mich. 169 (in case of a felony, 68 Mich. 480.) For a *breach of the peace* committed in his presence he may arrest without a warrant, 3 Ind. 475; 43 Ind. 60; 49 Ind. 56; 16 Ind. 486; 23 Tex. App. 409. It must be committed in his presence or view, and be still continuing at the time of the arrest. He has no right to arrest after it is over, without a warrant, 3 Ind. 475; 40 Mich. 576; see 48 Mich. 495; 30 Minn. 506; 7 Daly (N. Y.) 142. So long as he can detect the act amounting to a breach of the peace, although committed at some distance, it is done in his presence, 53 Mich. 493. He must immediately make the arrest upon the commission of the breach of the peace; and if he go away and return, or wait a while, he can not then make it, 9 J. & S. (N. Y.) 107; 3 Wend. 384; 16 S. C. 486; 140 Mass. 573 (but see 9 Met. (Mass.) 259.) A breach of the peace may be an affray, a riot, an assault, public and disorderly drunkenness, 9 Met. (Mass.) 259; 23 Tex. App. 409; 5 Harr. (Del.) 491; 17 N. C. 58; 2 Nutt & McC. (S. C.) 475; 86 N. C. 683; 15 Ill. 87; the wanton discharge of a firearm in a street to the disturbance of the peace, 53 Mich. 493; forcibly breaking open a door to a lodger's room under a *bona fide* claim of right, 9 Mo. App. 15; disturbing a religious, 3 Ind. 479; 4 Gr. (Ia.) 340, or other public meeting; exhibiting obscene pictures or making indecent exposures or postures of the person, 86 N. C. 683; or interfering with a city's servants laying pipes in the street, 126 Pa. St. 511. He may not arrest a common prostitute committing no offense in his presence, 22 Hun. 300; 41 Mich. 299; nor one not committing a breach of the peace, 59 Ind. 173.

13. So the marshal or a police officer may arrest any person violating any *city ordinance* within his view, the same as if it were a breach of the peace, 43 Ind. 60; 3 Ind. 475; 47 Ind. 289; 48 Ind. 19. But he can not act in such instances outside of the city, 9 Met. (Mass.) 259; 41 How. Pr. 481; except within the two-mile limit when the offense violates an ordinance extending over that limit.

14. An officer can not arrest a person *fraudulently refusing to pay* the full amount of his meal in a restaurant, 2 Daly (N. Y.) 220.

15. An officer making an arrest has the right to *search the person* of the individual arrested, and take from him any thing of a criminal nature, or that may afford evidence of the commission of a crime, or may enable or aid him to escape, 21 Vt. 9; 47 N. H. 482; but he may not take from him any thing whatever, unless it fall within the description given above.

16. As soon as arrested, whether with or without a warrant, for any offense whatever (36 Me. 317), the officer must, if the arrest is made in the day-time, *forthwith take him before a magistrate* having jurisdiction of the offense, 47 Ind. 289; 43 Ind. 60; 46 Ga. 80; 14 Minn. 385; 36 Me. 317; 75 N. C. 249; 77 Ga. 419; and charge him by affidavit with the offense. The court of a justice of the peace is always open in the day-time; but if there be no justice present in the township at the time of the arrest, nor a mayor, he may detain the person arrested a reasonable time until their return, not to exceed eighteen hours. If the arrest is for a violation of an ordinance, then he can take such person only before the mayor. If the person arrested be so intoxicated as not to understand the proceedings, or is not in a fit condition for trial, he may detain him until he becomes sober, 47 Ind. 289; even though arrested when the court is sitting, 72 Ia. 145. He need not take him before the magistrate when the arrest is made in the *night-time*, 47 Ind. 289; 43 Ind. 60; or perhaps after the close of the usual hours of business, if he can be presented to the magistrate before eighteen hours have expired, in case the arrest is by the marshal or a policeman. A delay in taking a prisoner before a magistrate can only be justified "by the necessity of the case, and so long only as the

necessity" exists, 3 Cush. 438. An unauthorized delay, or a release of the person by the officer arresting him, even though the person arrested be guilty, will subject the officer to an action for false arrest, or imprisonment, unless the prisoner expressly waives his right of action, 108 Mass. 520; 75 N. C. 249; 125 Mass. 198; 144 Mass. 294; but the officer may release him without danger as soon as he discovers that he is not guilty, 36 Me. 317.

17. The officer arresting an offender may take and *deliver* him *to the county jailer*, or put him in the *city prison*, and the jailer can confine him until such time as he can be tried, 43 Ind. 60; 47 Ind. 289; the jailer is bound to receive him without a mittimus, 8 S. & R. (Pa.) 47; 14 Gray, 226, unless he knows that the arrest was illegal, into which he is not even bound to inquire, 43 Ind. 60. The officer arresting may confine the prisoner in any reasonable place until the time of trial; as in the penitentiary, 2 Utah 284; a box-car, 72 Ia. 145; but not in an unhealthy place, nor can the jailer confine him in such a place, 43 Ind. 60; and if a city maintains an unhealthy prison it will be liable to any one injured by confinement therein, 77 N. C. 229.

18. If the offender *escape* after arrest, the officer may pursue and capture him at any time thereafter; and the entire transaction will constitute but one arrest, 2 B. 294 (see 7 Ind. 582).

19. It is lawful to *resist an illegal arrest*, and any one may interfere to prevent it, 8 Tex. App. 545; 9 S. C. 309; not, however, by using "excessive violence," 76 N. C. 10; 69 Ill. 111. The person resisting can not take the life of the officer, and if he does he will at least be guilty of manslaughter, 72 Ill. 37; 14 Me. 138; 3 Yerg. (Tenn.) 392; 24 Ala. 672; 4 Mass. 391; 44 Ala. 41; but if the officer is not known as an officer, although acting within his jurisdiction, resistance is justifiable, even to taking such officer' slife, 8 Tex. App. 545; 32 N. Y. 509; see 13 Crim. Law Mag. 173.

20. If an officer illegally shoot an offender, although the arrest is legal, such offender is justified in shooting the officer, on the ground of *self-defense*, 44 Tex. 128; 2 Houst. (Del.) 608; see 13 Crim. Law Mag. 173.

21. *Injunction* will not lie to prevent an arrest, 75 N. Y. 362; 63 How. Pr. 396; 12 Abb. (N. S.) 410; but it will to prevent the enforcement of a void ordinance, 14 Barb. 425.

22. A *warrant* issued by a justice or mayor to a marshal or constable, in a criminal case, and *certified* to by the clerk of the circuit court, authorizes such marshal or constable to pursue and arrest the person named in it within any county of the State, 41 Ind. 181, R. S. 1881, § 1625.

23. An offender *in the legal custody of an officer* may be arrested by another officer on another charge, if the former will permit it, 12 Ind. 660.

[2 R. S. 1852, p. 480. Approved May 27, 1852, and in force May 6, 1853.]

SEC. 3076*a*. **Acts through county — Citizens to aid.** 6. Constables, in the discharge of their duties, shall have power to act throughout their respective counties, unless specially restrained by law; and, whenever necessary, may call upon any number of citizens to assist them in the discharge of their duties, who shall not refuse such assistance, under such penalty as may be prescribed by the criminal law. [R. S. 1881, § 5979.]

SEC. 3076*b*. **Mittimus — Receipt.** 7. Whenever any constable shall commit to jail any prisoner in his custody, he shall leave with the jailer the writ by authority of which he commits such prisoner; and such jailer shall give him a receipt therefor, containing at length a copy of such writ. [R. S. 1881, § 5980.]

SEC. 3076*c*. **Where may arrest fugitive.** 8. In executing a warrant for the apprehension of any fugitive from justice who has fled into another county from any county in this State, a constable may

arrest such offender in any county where he may be found; but, if such offender shall request it, he shall not remove him from such county without taking him before some officer authorized to issue and try writs of *habeas corpus*, and giving such offender time to make application for such writ. [R. S. 1881, § 5981.]

1. This section and § 1625, R. S. 1881, as amended, are to be construed together; and it seems that the constable must have the clerk's certificate required by the latter, before he is authorized to make the arrest in another county, 41 Ind. 181.

2. The three sections above are applicable to marshals of cities.

[1881 S., p. 109. Approved and in force April 9, 1881.]

SEC. 3077. Same fees as constables. 2. City marshals shall be entitled to the same fees as constables, as well while acting in the capacity of marshal as constable.

Before the passage of this act in 1881 he was entitled to no fees, 69 Ind. 244.

[1875 S., p. 31. Not approved by the governor, but in force August 24, 1875.]

SEC. 3077*a*. Fees. 26. Constables shall receive fees as follows:

For serving a summons or warrant on each person named therein, twenty-five cents.

For copy of the process left at residence of defendant, twenty-five cents.

For serving subpœna for each person therein named, twenty cents.

For returning each writ, ten cents.

For bail bond, twenty-five cents.

For serving execution, twenty-five cents.

For commitment to prison, twenty-five cents.

For sale of goods, when the value of goods does not exceed six dollars, twenty-five cents.

On all sums above five dollars, five per centum.

On all moneys collected on execution without sale, one-fourth of the above commission.

For returning execution, ten cents.

For summoning a jury in any case, fifty cents.

For posting up advertisements of sale, thirty cents.

In criminal cases, for serving warrants on each person named therein, twenty-five cents.

For serving subpœna, twenty-five cents.

For attending examination on trial of a person charged with a crime or misdemeanor, twenty-five cents.

If more than one, additional for each, twenty-five cents.

For commitment of each person to prison, twenty-five cents.

For services not herein enumerated, the same fees as in civil cases. [R. S. § 5985.]

[1879 S., p. 130. Approved March 31, 1879, and in force May 31, 1879.]

Sec. 3077*b*. Mileage. 35. Constables' mileage, for each mile necessarily traveled in going and returning to serve process and subpœna, ten cents. [R. S. § 5986.]

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3078. City attorney's duties and fees. 30. The city attorney shall be the legal adviser of all the officers of the city in relation to their official acts, and shall advise the council upon all matters of law which may be submitted to him in reference to the action of such council. He shall draw all contracts, ordinances, and legal documents which may be required of him by the common council, and do and perform all other acts pertaining to the duties of his office. He shall prosecute all actions in favor of the city, and defend all actions brought against such city for any cause; but in no case shall the city be liable for costs. The city attorney shall be allowed a docket-fee in all cases tried before the mayor or city judge, for violations of the city ordinances or upon appeals from judgments to the circuit court, when he appears in person or by deputy, as follows:

Docket-fee before the mayor or city judge, on a plea of "guilty," two dollars.

Docket-fee before the mayor or city judge, on a plea of "not guilty," four dollars.

Docket-fee in cases in the circuit court, upon appeal on a plea of "guilty," two dollars and fifty cents.

Docket-fee in cases in the circuit court, upon appeal on a plea of "not guilty," five dollars.

1. He may be removed by a majority vote, but if charges are preferred, a two-thirds vote is necessary, 32 Ind. 74. His dismissal can not be shown by parol, nor can the amount of his salary or employment be thus shown. If no record was made of his employment or the fixing of his salary, an entry of such action may be made *nunc pro tunc;* and must be before such facts can be shown, 64 Ind. 319. But if an attorney is employed by a city for a special purpose, in open council or by a proper committee, and under such employment he perform services which are accepted by the city, the latter can not refuse to pay him on the ground that no record thereof was ever made, 116 Ind. 15; 30 Vt. 285. Nor can the city avoid paying for such services on the ground that the amount exceeds the *debt* allowed by the *constitution*, 116 Ind. 15; see § 220, *note*. The city is not liable for the *docket fees*, even though it has received their value from the services of the convicted person, 53 Ind. 508.

2. The city is liable for services rendered under employment from it to an attorney in defending its marshal in an action brought against him for false imprisonment, 103 Ind. 196; 90 N. C. 427; 2 Col. 588. So it may employ an attorney in addition to its regularly-elected attorney, 116 Ind. 15; 13 Cal. 531; 40 N. J. L. 186. The city attorney has power to take an appeal from a judgment, either for or against a city, and to take all the necessary steps to perfect it, 114 Ill. 233. Acceptance of the office by an attorney will estop him from claiming more than the salary allowed by the city ordinance, 80 Mo. 484; 34 Ark. 303; 102 N. Y. 13; 58 Tex. 334. The city is bound by his agreement in writing to refer a certain case, acted upon by the court, 55 N. H. 559. On appeal in an action on a penal ordinance, the city attorney, in case of a conviction in the circuit court, is entitled to both his fees before the mayor and in the circuit court, 114 Ind. 542.

Sec. 3079. Treasurer's duties. 31. The treasurer shall receive all moneys, notes, bonds, and orders belonging to the city, and keep an accurate account of the amounts received and paid out by him; and no money shall be paid out of the treasury by him, except upon an order signed by the mayor or presiding officer of the common council, and countersigned by the clerk.

1. City treasurer in large cities abolished, Appendix II, § 1. In any city having a population of less than 70,000, the common council may require the county auditor to extend the city levy upon all property within the city upon the county tax duplicate, and when so entered the county treasurer collects and pays the amount collected over to the city treasurer, § 3225*a*.

2. The doctrine held in some doubtful cases as to the conclusive character of the reports of the state and county officers against themselves and their sureties, is not applicable to city treasurers, 63 Ind. 155. See 93 Ind. 311. Changed by statute, § 6507.

Sec. 3080. Duties of treasurer and clerk. 32. All moneys due to or collected for such city on any account whatever shall be paid to the city treasurer, who shall, for all sums received by him, issue a receipt to the person paying the same; which receipt, except for taxes charged on the duplicate, such person shall file with the city clerk, who shall thereupon issue a quietus to such person, and charge the treasurer with the amount therein specified and upon what account paid. He shall receive city orders that are due, in payment of any debt, tax, or assessment due such city; and when an order is received by him for any debt, tax, or assessment due such city, or otherwise paid or redeemed, he shall cancel the same by writing or stamping upon the face of such order the word "redeemed" and the date of redemption; and such order shall never again be put in circulation. He shall also, in like manner, cancel all bonds or other evidences of indebtedness redeemed or liquidated by him. He shall register all orders by him so redeemed in a book to be furnished him for that purpose, in the same manner as the clerk is required to register such orders; he shall also register all receipts given by him as required in this act, except receipts for taxes charged on the tax duplicate.

See § 3179, *note* 1, and § 3225*a*, when treasurer does not collect taxes. For suit upon orders, and set-off, see § 3069, *note*.

Receipt.

No. .....

....., Ind., ..., 18...

Received of .....

.....dollars ..... cents,

on account of .....

$..... .....

City Treasurer.

Quietus.

....., Ind., ..., 18...

.....

has this day filed in my office City Treasurer's Receipt No. ..... for

..... dollars, ... cents,

on account of.....

.....

.....

$..... .....

City Clerk.

Register of Orders.

No.	Date.	Amount.	To whom payable.

Register of Receipts.

No.	Date.	Amount.	To whom given.	On account of.

[1875, p. 28. Approved March 11, 1875, and in force August 24, 1875.]

SEC. 3081. Treasurer's duties—Interest. 1. The city treasurer shall pay all orders issued by the city of which he is such treasurer, when presented, whether indorsed or not as hereinafter stated in this act, if there be money in the treasury, appropriated for that purpose, sufficient to pay the same; if there be not money enough thus to pay such orders, he shall write or stamp on the back thereof, over his name, the date of such presentation, and note same "indorsed," in a register of orders to be provided him for that purpose; and such orders shall be entitled, thenceforth, to draw legal interest until there shall be money on hand sufficient to pay the same.

SEC. 3082. Interest — Orders receivable. 2. Whenever there shall be money on hand to pay all outstanding orders which have been indorsed prior to any given date, the treasurer shall publish notice of such fact, by three insertions in some newspaper of general circulation in such city, and that such outstanding orders will be redeemed on presentation; and interest shall cease on such orders from and after the date of such publication: *Provided*, That city orders shall be received in payment of taxes for general purposes, and for all claims and demands due or belonging to the general fund of the city, without regard to priority of presentation or date of issue; but the treasurer shall not pay any balance thereon, over and above the amount of such tax, claim, or demand, when there are outstanding orders unpaid for want of funds.

1. The rate of interest is six per centum. If he do not pay or indorse the order, he will be liable for the full amount with six per cent. interest, 56 Ind. 288.

2. If there is no money in the treasury of a city having a voting population of 16,000, a warrant can not be drawn upon it, § 3123.

Notice Concerning City Orders.

Notice is hereby given to the holders of city orders Nos. —— [*or*, to all the holders of city orders], of the city of ———, that there is now money on hand in the city treasury to pay all such orders; and that interest thereon will cease the ——— day of ———, 18—.

———
City Treasurer.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3083. Treasurer's statements and liability. 33. The treasurer shall, on the last day of each month, furnish to the clerk a statement of all the receipts and disbursements made by him during the month, and the balance then in the treasury belonging to each fund, general and special, and also deliver to him all the orders redeemed and canceled by him during the same period, taking the clerk's receipt therefor; which statement with the orders redeemed, the clerk shall lay before the common council at its next meeting, to be disposed of as the common council may direct. The treasurer shall, at least fifteen days before any annual election, and at all other times when so required by the common council, render a full account of the receipts and expenditures for the current year, and the general condition of the treasury. He shall also, at his own peril, keep the moneys of the city safely.

1. This section applies to cities having a population of 70,000, where the county treasurer collects the tax, Appendix II, § 2; and such county treasurer must make reports to the common council of such cities the same as a city treasurer in smaller cities, 106 Ind. 415.

2. The treasurer is the absolute owner of the money in his hands, and may loan and collect for himself all interest accruing by virtue of such loan, 53 Ind. 331; 36 Ind. 346. He may receipt for the amount of a judgment recovered on the bond against his defaulting predecessor, 70 Ind. 314. He may keep the city funds wherever he sees fit, and the council can not control his discretion therein, 22 Ind. 125; 111 Ind. 170; see 66 Ind. 386. He is not bound, perhaps, to look beyond the face of the order, to see if the clerk and mayor had authority to issue it, 66 Ind. 386. If he hold bonds owned by the city, and sell them at a premium, he must account for the principal, interest and premium, 96 Ind. 111.

Clerk's Receipt of Canceled Orders.

No.—— ———, Ind., ———, 18—

Received of A. B., treasurer of said city [*or*, of ——— county], the following canceled orders, to wit:

No.	Date.	Amount.	To whom payable.	On account of.

C. D.,
City Clerk.

Treasurer's Monthly Report to Clerk.

RECEIPTS.

To A. B., Clerk of the City of ———:

Sir: I herewith submit an itemized statement, showing the receipts by the treasury of said city during the month of ———, 18 —, viz.:

Accounts.	Amount. *Dols.*	*Cts.*	Total. *Dols.*	*Cts.*
Board of Health,				
Bridges,				
City Assessor's Department,				
City Civil Engineer's Department,				
City Dispensary,				
City Hall,				
City Hospital [and Branch],				
City Treasurer's Percentage,				
Cisterns,				
Elections,				
Fire Department,				
Fountains and Driven Wells,				
Gas,				
Incidentals,				
Interest on Bonds,				
Judgments and Costs,				
Markets,				
Market Master's Fees,				
Parks,				
Police,				
Printing,				
Salary,				
Sewers,				
Station House,				
Street Improvements,				
Street Openings and Vacations,				
Street Repairs,				
Taxes Refunded,				
Water Rent,				
For School Fund,				
For Sewer Fund,				
For Sinking Fund,				
SPECIAL FUNDS.				
From Special Sewer Fund,				
Total Received,				

City [*or*, County] Treasurer.

DISBURSEMENTS.

I also herewith submit the amount of the disbursements of said treasury for the month of ———, 18—, viz.:

Accounts.	Amount. Dols.	Cts.	Total. Dols.	Cts.
Board of Health,				
Bridges,				
City Assessor's Department,				
City Civil Engineer's Department,				
City Dispensary,				
City Hall,				
City Hospital, and Branch,				
City Treasurer's Percentage,				
Cisterns,				
Elections,				
Fire Department,				
Fountains and Driven Wells,				
Gas,				
Incidentals,				
Interest on Bonds,				
Judgments and Costs,				
Market,				
Market Master's Fees,				
Parks,				
Police,				
Printing,				
Salary,				
Sewers,				
Station House,				
Street Improvements,				
Street Openings and Vacations,				
Street Repairs,				
Taxes Refunded,				
Water Rent,				
School Fund,				
Sewer Fund,				
Sinking Fund,				
SPECIAL FUNDS.				
Special Sewer Fund,				
Total Disbursements,				

County [*or*, City] Treasurer.

[This form can be used, by making slight verbal changes, for the annual report.]

SEC. 3084. Treasurer's assessments. 34. The treasurer shall require of each and every person whom the assessor failed to list, a statement of his taxable property and the value thereof, which

shall be given under the same regulations as if furnished by the assessor; and for that purpose the treasurer is authorized to administer the necessary oath or affirmation. If such person fail to furnish such statement, the treasurer shall value the same as the assessor is required to do in like cases.

The treasurer is now governed by the state law (§§ 3160, 3263, 118 Ind. 323), being § 6456, in assessing omitted property. *Surplus*, § 3090 and § 6432.

Sec. 3085. Collecting delinquent taxes. 35. The treasurer is not required, in any instance, to make a demand of taxes from the persons charged therewith, but may, in his discretion, do so; and if any person charged with a poll-tax, or any tax upon personal property, or any tax upon real estate, shall fail, when called on, to pay the same, together with all interest, penalties, and costs, it shall be lawful for said treasurer to seize the chattels of such defaulter forthwith, and make sale thereof, as provided in this act, to satisfy the same; and should there be a surplus, after such sale and payment, he shall pay the same to the said person making such default.

1. Only the city or county (§ 3225*a*) treasurer is authorized to collect the taxes; and a contract with any one else to do so is void, 88 Ind. 62. In large cities the county treasurer collects. Acts 1885, p. 13.

2. The "demand" here referred to is one that can be made before the tax becomes delinquent. He can make no levy until after the third Monday in April, §§ 3087, 3160, 3263.

Sec. 3086. Lien of taxes. 36. The lien of such incorporated city for all taxes, general or specific, shall attach on all real estate on the first day of April annually; and such lien shall be perpetual for all taxes due from the owner thereof, which have heretofore accrued or shall hereafter accrue, with the interest and penalties in each case, until payment; which lien shall in nowise be affected or destroyed by any sale or transfer of any such real estate. All the property, both real and personal, situate in any incorporated city shall be liable to the payment of all taxes, penalties, interest, and costs charged to the owner thereof in such incorporated city; and no partial payment of any such taxes, penalties, interest, or costs shall discharge or release any part or portion of such property, until the whole be paid; which lien shall in nowise be affected or destroyed by any sale or transfer of any such personal property. All taxes upon real estate shall be a lien thereon to the same extent as a judgment of a court of record of general jurisdiction, and shall have preference to any private charges upon the same; and all taxes upon personal property shall have preference over private claims.

§§ 6446 and 6447 are applicable to the lien of city taxes by virtue of §§ 3160, 3263; 118 Ind. 323. Personal taxes assessed against the owner of a lot become a lien thereon, for the payment of which it is liable to be sold, 14 Ind. 465; 41 Ind. 353; 76 Ind. 130; even a poll-tax constitutes such a lien, 41 Ind. 410. The tax-payer may now make a partial payment and have it applied to a particular piece of property, but such payment does not discharge such property from

the lien of the remaining taxes owed by such tax-payer. See §§ 6448, 6449. Conflicting liens of city and county taxes, which is superior, § 3160, *note* 4.

Sec. 3087. Collecting taxes. 37. Immediately on receiving the tax duplicate, the city treasurer shall proceed to collect the same, and shall give notice, by publication in some newspaper having a general circulation in such city, for three successive weeks, stating in such notice the amount of tax charged for general or specific purposes on each one hundred dollars' valuation, also, the amount of poll-tax, and, also, the day on which the penalty will attach for non-payment of such taxes. In case any person shall refuse or neglect to pay the tax imposed on him, the city treasurer shall, after the third Monday of April, levy the same, together with ten per cent. damages, and the costs and charges that may accrue, by distress and sale of the goods and chattels of such person who ought to pay the same, wheresoever the same may be found in the city. The power to levy and collect shall continue in such treasurer after his return and settlement with the city clerk, until the taxes shall be paid, should goods or chattels of the delinquent be found within the city. The said treasurer shall, annually, on the first Monday of August, file with the city auditor schedules of all such delinquent taxes collected by him, verified by oath or affirmation, and shall be charged by the clerk with the amount collected.

Payment in installments. See § 3225*a* and § 3160*a*. The county treasurer may be required to collect city taxes, § 3225*a*. *Notice*, § 6424; *demand* of delinquents, § 6427; person about to *remove from city or county*, § 6433; 118 Ind. 323.

Sec. 3088. Sale of land for taxes. 38. If no goods or chattels can be found, out of which to make the tax, penalties, interest, and costs charged against any person named in such duplicate, the treasurer shall sell any lot or land, or so much thereof as may be necessary, listed to such person, to pay the tax, with interest, penalties, and costs thereon; and the treasurer's certificate to the purchaser shall state for what tax or taxes, interest, penalties, and costs, said lot or parcel of land was sold; which certificate shall be *prima facie* evidence of all the facts therein set forth.

1. Sales are conducted under the general law of the State for the collection of taxes. See §§ 3094, 3160, 3263, which is found from §§ 6457 to 6465, and amendments. The sale in all respects is conducted like a sale by the county auditor, and takes place on the second Monday in February, § 6458; 118 Ind. 323; conflicting liens of county and city taxes, and sales thereon, § 3160, *note* 4.

2. The city can not purchase property sold by it, nor warrant the title of a purchaser at a tax sale. If the tax sale proves invalid, the tax-payer has no remedy against the city, 84 Ind. 467.

Sec. 3089. Notice of sale of chattels. 39. The treasurer shall give public notice of the time and place of sale of all goods and chattels to be sold, at least ten days previous to the day of sale, by written and printed advertisements, to be posted up in at least three public places in the city where such sale shall be made.

Sec. 3090. Chattels at auction. 40. Such sale shall be made at public auction. No more property shall be sold than is sufficient to pay the tax, penalties, interest, costs, and charges; and, if convenient, it shall be sold in parcels; and if sold for more than the amount necessary, the surplus shall be returned to the owner thereof.

For the law relative to levy and sales, see §§ 6429 to 6434; 118 Ind. 323. Collecting tax from corporations, see §§ 6435 to 6437.

Sec. 3091. Land, how sold. 41. In selling lots and parcels of land the treasurer shall offer the least quantity thereof that any bidder will take, and pay the amount of tax, penalties, interest, damages, and costs assessed; and he shall make, seal, and acknowledge, before some competent authority, a certificate of the land thus sold to such person. Before making such sale, the treasurer shall give notice, not less than twenty days, in a newspaper printed and published in said city, that, on a certain day therein named, he will offer for sale the lands and lots on which taxes shall remain unpaid, or so much thereof as shall be necessary to pay said taxes, penalties, interest, and all costs and charges made by reason of the failure to pay said taxes. If such city is a county-seat, it shall be made at the court-house door; if not, it shall be made at the door of the city-hall or other place of meeting of the common council.

For the general tax law governing sales, see §§ 6457 to 6465. For treasurer's guaranty see § 6465; 118 Ind. 323. The city is liable for printing the delinquent list, even though it had been once printed, when printed by its order, 59 Ind. 324.

Certificate of Tax Sale.

Whereas, on the ——— day of ———, A. D. 18—, the tax duplicate of the city of ———, in ——— county, and State of Indiana, for the year eighteen hundred and ———, duly attested, and with the warrant required by law thereto attached, was by the clerk of said city delivered to the undersigned, treasurer thereof, for collection: And whereas, it appeared from said duplicate, that there had been assessed upon the lots hereinafter particularly described, situated in said city as the property of ———, the amounts following, to wit: upon ——— the sum of ——— dollars for the year 18—, and the sum of ——— dollars for delinquent taxes of the year 18—, ———, all of which was then due and unpaid: And whereas, there had accrued on said taxes a penalty in the sum of ——— dollars, and for interest the sum of ——— dollars, and for costs the sum of ——— dollars; And whereas, the undersigned, treasurer as aforesaid, finding no goods or chattels out of which to make said taxes, or any part thereof, and having advertised the said real estate for more than twenty days next before the day of sale, in a newspaper printed and published in said ——— did on the ——— day of ———, A. D. 18—, offer for sale at public auction, at the door of the ——— of said county, in said city the least quantity of said lot.., that any one would take and pay the amount of said taxes, interest, penalty, and costs, so assessed against the said ——— as aforesaid, and no person bidding for less than the quantity hereinafter described, the same was then and there openly struck off to ——— for the sum of ——— dollars, that being the highest and best price offered for the same. Now, therefore, In consideration of the premises, and of the payment of said sum of ——— dollars, so bidden by the said ———, as aforesaid, the receipt of which is hereby acknowledged, I, ———, treasurer of the ———, do hereby certify that the said ——— will be entitled to a deed for

the premises so purchased by him as aforesaid, to wit: ———, at the expiration of two years from the date of this certificate, unless the same shall have been previously redeemed according to law.

In witness whereof, The said treasurer has hereto set his hand and seal, this day of ———, A. D. 18—.

———[Seal.]
Clerk of the City of ———.

State of Indiana, ——— *County, ss:*

Before me, ———, a ——— within and for said county, personally came the above named ———, clerk of ———, and acknowledged the execution of the above and foregoing certificate for the uses and purposes therein mentioned.

Witness my hand and ——— seal, at ———, this ——— day of ———, A. D. 18—.

CERTIFICATE.

Tax sale, ——— day of ———, 18—.

Lot No. ———, in ———, No. ———, owned by ———

Sold to .....

Taxes, ... $ .....

Penalty, ... $ .....

Interest, ... $ .....

Costs, ... $ .....

———
City Treasurer.

Treasurer's Warranty.

I, ———, treasurer of the city of ———, do hereby guarantee and warrant that the taxes due upon the land described in the within certificate of tax sale, and for which the same was sold, were due and delinquent for the years therein named, and that the same has never been paid by the owner of said land nor by any person on his behalf, and that the same were yet due and unpaid at the time of the sale thereof named in such certificate.

In testimony whereof, I have hereunto set my hand and seal, this ——— day of ———, 18—.

———[Seal.]
City Treasurer.

Sec. 3092. Return of land sold—Redemption. 42. It shall be the duty of the treasurer, immediately after the sale of any lot or parcel of land, to make return of the same to the city clerk, distinctly stating the lot or parcel of land sold, the name of the purchaser, the day of sale, and the amount of tax, penalties, interest, and costs for which it was sold; and any owner or claimant thereof, his agent or attorney, may redeem the same, upon the terms and in like manner as the lands sold for state and county taxes are redeemed, by payment to the city treasurer.

Register of Sales for Taxes, ... of . . . . . .

DATE OF SALE.	DUPLICATE NO.	TO WHOM ASSESSED.	DESCRIPTION.	NO. LOT	NO. SQ'RE	NO. OUT-LOT.	YEARS SOLD FOR.	CURRENT TAXES.	DELINQUENT TAXES.	INTEREST.	COST.	TOTAL.	PURCHASER.	DATE OF REDEMPTION.	BY WHOM REDEEMED	RECEIPT NO.

Sec. 3093. Annual settlement. 43. The city clerk and treasurer shall attend at the office of said clerk on the third Monday of April annually; and the treasurer shall then and there make settlement with the clerk for the amount of taxes for which said treasurer is to stand charged, as follows:

First. The clerk shall take from the duplicate in the hands of the treasurer for collection, a list of all such taxes as said treasurer shall have been unable to collect, therein describing the property on which such delinquent taxes are charged as the property is described on such duplicate, and shall note therein, in a marginal column, the reasons assigned by such treasurer why such taxes could not be collected.

Second. Such list shall be signed by the treasurer; and he shall also testify to the correctness thereof, under oath or affirmation, to be administered by the clerk.

Third. The clerk shall forthwith record such list of delinquencies in a book to be kept in his office, and deliver copies of the same to the treasurer for collection; and the treasurer shall make return of such collections in the manner provided for in the thirty-seventh section of this act [§ 3087].

1. For *conclusiveness* of such settlement, see § 3079, *note*, and § 6507; § 6500 also applies to these settlements. For *mistake* made, see § 6504; *liability* for failure to return, see § 6505; *refunding*, see § 6510; 118 Ind. 323.

2. A second settlement takes place on the first Monday in November, at which time the list of *delinquent lands* is made out, § 6500.

Sec. 3094. Fees on forfeited lands. 44. The treasurer shall be entitled to such fees for collections made by distress and sale, and charges for keeping and removing property distrained, as are paid to county treasurers for like services. In case of no sale of any lot or parcel of land for want of bidders, the treasurer shall so return to the common council; and the said lot or parcel of land shall thereafter be considered as forfeited to such city, to be disposed of as the common council shall thereafter, by ordinance, direct; but no disposition shall be made by such common council until after the expiration of four years from the date of such forfeiture; and until so disposed of or redeemed, such lot or parcel of land shall be continued on the duplicate, charged with all arrearages for which it was forfeited, and interest and ten per cent. damages per annum, and shall be annually assessed and charged with all accruing taxes, penalties, and interest, as other lands. Such land shall annually be offered for sale, with and on the same terms as other delinquent lands; and, until sold for the amount of all arrearages, may be redeemed, as provided in section forty-two [§ 3092], on payment of the same into the city treasury by the owner or owners thereof. All sales by the treasurer for delinquent taxes, and the giving of certificates and conveyances therefor, shall be conducted in the like manner as by the county treasurer under the general law of the State; but such conveyance shall be made

to such purchaser in the corporate name of the city; which certificates and deeds of conveyance shall be *prima facie* evidence of all the facts stated therein.

1. The *fees* allowed under this section for the collection of taxes are the same as county treasurers receive for similar service (§ 6434); and their fees are the same as a constable receives on an execution sale, § 3077*a*; 74 Ind. 133. They do not include the percentage allowed county and city treasurers for similar services (R. S. 1881, § 5928), and such fees and charges are collectible out of the property of the tax-payer in each case, and can be deducted from the amount of the tax, interest, and penalty, only in case the sum realized is insufficient to pay both, 74 Ind. 133. The application of the state tax law (§§ 3160, 3263,) did not change this rule, 74 Ind. 133.

2. Tax sales by cities was *legalized* in 1875, acts 1875, p. 148. See 74 Ind. 133.

3. For *form of deed*, see § 6480, which can be modified to suit a tax deed issued by a city. This tax deed of the city must be issued in its corporate name, and be signed by the city clerk and sealed with the corporate seal. The mayor does not sign it, as is the practice in some cities; for he, under the state tax law, is not the corresponding officer of the city to the county auditor; that officer is the clerk. See § 3160, *note*.

4. For collection from *unsold realty*, see §§ 6491 to 6494; for *tax titles*, see §§ 6495 to 6499; *re-imbursement* of purchaser, § 6487; 118 Ind. 323.

Sec. 3095. Oath—Bonds. 45. The mayor, each member of the common council, city clerk, assessor, civil engineer, street commissioner, marshal, city attorney, and treasurer shall each, before entering upon the duties of his office, take and subscribe an oath, to be indorsed upon the back of his certificate of election, before some officer authorized to administer the same, to support the constitution of the United States and the constitution of the State of Indiana, and to faithfully and honestly discharge the duties of his office; which oath, with his certificate of election, shall be filed with the city clerk. And each of said officers, except members of the council, shall, in like manner, execute a bond, with approved security, payable to the State of Indiana in such penal sum as the common council shall, by resolution or ordinance, order and direct, conditioned for the faithful performance of the duties of his office and the payment of all moneys received by him according to law and the ordinances of such city: *Provided, however*, That in no case shall the mayor's bond be fixed at a less sum than three thousand dollars, nor shall the treasurer's bond be fixed at a less sum than double the amount of the estimated tax duplicate of the current year; which bonds shall be filed with the city clerk, except the bond of the clerk, which shall be filed with the city treasurer.

1. As to mayor's bond, see, also, § 3062.

2. This section authorizes the bond of the clerk to be conditioned for the payment of all moneys received by him according to law and the ordinances of the city; nor can either he or his sureties contest the validity of an ordinance under which he has received moneys, on the ground that they should have been paid, by the provisions of the statute, to the city treasurer, 120 Ind. 166.

3. The bond, in an action thereon, must be set out as an exhibit; but an ordinance affecting the treasurer's liability on such bond need not be, and if so

done it will not be considered as constituting a part of the complaint, 63 Ind. 155.

4. For liability for moneys received by the sale of water-works bonds, see 63 Ind. 155.

5. *Freehold sureties* are not required, unless by an ordinance of the city. The council in open session *approves* the bonds, except the mayor's, § 3062. The signatures to them should be *acknowledged* before an officer authorized to take acknowledgments, R. S. 1881, § 5533, although this is not compulsory, 32 Ind. 313. Sureties obtaining a *release*, or when new bond required, procedure, R. S. 1881, §§ 5538 to 5551.

Certificate of Election.

Office of City Clerk, ———, *Ind.*, ———, 18—.

To All Whom it May Concern:

This is to certify, That in pursuance of the provisions of the general law for the incorporation of cities of this State, and the acts of the legislature supplemental thereto, the board of inspectors of an election have filed with me a certificate setting forth and declaring that at a ——— election held in said city, on the——— day of ———, 18—, ——— was duly elected to the office of ———, in and for the said city of ———, to serve as such for the term of ———, and until his successor is elected and qualified.

In witness whereof, I have hereunto set my hand, and affixed the seal of the city, this ——— day of ———, 18—.

City Clerk.

[City Seal.]

Oath of Office.

State of Indiana, ——— *County, ss:*

I, ———, do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as ——— of the city of ———, according to law, and to the best of my ability, so help me God.

Subscribed and sworn before me, this ——— day of ———, 18—.

Official Bond.

State of Indiana, ——— *County, ss:*

Know all Men by these Presents:

That we, ——— and ———, of the county of ———, and State of Indiana, are held and firmly bound unto the State of Indiana, in the penal sum of ——— dollars, for the payment of which sum, well and truly to be made, we do by these presents firmly bind ourselves, our heirs, executors, and administrators; sealed with our seals, and dated this ——— day of ———, 18—.

Now, the condition of this obligation is such, That, whereas, the above bound ——— was on the ——— day of ———, 18—, duly elected by the ——— of the ——— of ——— to fill the office of ——— in and for the said ——— of ——— county, Indiana, for the term of ——— and until his successor is elected and qualified.

Now if the said ——— shall well, truly, faithfully, and impartially discharge the duties of his said office, and pay over, according to law, all moneys that may,

by virtue of his said office, come into his hands, then this bond shall be null and void, otherwise to remain in full force and effect in law.

In witness whereof, we have hereunto set our hands and seals, the day and year above written.

_____[Seal.]

_____[Seal.]

_____[Seal.]

State of Indiana, ——— *County, ss:*

Personally came ———, principal, and ———, sureties on the within bond, and severally acknowledged the execution of the same for the uses and purposes therein expressed, without condition or reservation.

In testimony whereof, I have hereunto set my hand and seal, this ——— day of ———, A. D. 18—.

_____

Entry of Approval of Bonds.

Be it remembered, that the bond of A. B., marshal-elect of the city, with C. D. and E. F. as sureties, in the penal sum of ——— dollars, is hereby approved, and the clerk is ordered to receive and file the same.

Ordinance Fixing the Amount of Official Bonds.

SEC. 1. *Be it ordained by the Common Council of the City of* ———*:*

That the penal sum of the official bonds of the following named officers shall be, and the same is hereby, fixed at the following amounts:

That of the mayor at the sum of .....dollars.
That of the city clerk at the sum of.....dollars.
That of the assessor at the sum of.....dollars.
That of the civil engineer at the sum of .....dollars.
That of the street commissioner at the sum of.....dollars.
That of the marshal at the sum of .....dollars.
That of the city attorney at the sum of.....dollars.

That of the treasurer at a sum not less than double the amount of the estimated city tax duplicate of the year in which he shall give it.

Demand for Possession of Office.

State of Indiana, City of ———, *ss:*

To ———, *formerly* [set forth the title of office] *of said city of* ———*:*

You are, hereby, notified that I ——— have been elected [*or*, appointed] to the office of ———, as your successor, and having been commissioned and having qualified as such, do request that you deliver to me, as such successor, all property, books, and effects, of every description, in your possession belonging to the said city; or appertaining to said office of ———.

Dated this day of ———, 18—.

_____

ARTICLE 2—GOVERNMENT AND POWERS.

SEC.
3096. Meetings—Casting-vote—President *pro tempore*.
3097. Stated and special meetings.
3098. Officers.
3099. Ordinances.
3100. Penal ordinances—Publication.
3100*a*. Advertising in daily papers.
3100*b*. Party interested may designate paper.
3100*c*. Laws repealed.
3100*d*. Legal advertising in large cities.
3100*e*. License notices.
3100*f*. Number of publications.
3101. Expulsion of officers.
3102. City seal.
3103. Streams and ferries.
3104. Contracts.
3105. Salaries.
3106. Control of finances—Powers.
3107. Market-houses.
3108. Market-houses.
3109. Market-houses—Nuisance.
3110. Pipes for heating, etc.
3110*a*. Marine railways—Gas-pipes.
3110*b*. Pipes and mains beyond city limits.
3111. Selling real estate.
3112. Vote necessary—Deed.
3113. Appraisement.
3114. Water-works.
3115. Infirmary for poor.
3115*a*. City may purchase real estate for sanitary purposes.
3116. Large cities may borrow money.
3117. Purpose of loan.
3118. Ordinance for loan.
3119. Interest—Sale of bonds.
3120. Large cities—Funding-bonds.
3121. Limit of debt.
3122. Limit of tax levy.
3123. Orders forbidden.
3124. Appropriations forbidden.
3125. Funding by small cities.
3126. Tax—Sinking fund.
3126*a*. Sinking fund commissioners.
SEC.
3126*b*. Election—Oath—Bond.
3126*c*. Duty of treasurer—Deposit of funds.
3126*d*. Commissioner's report and publication.
3126*e*. Use of funds—Misappropriation.
3126*f*. Pay of commissioner.
3126*g*. Removal of commissioner.
3126*h*. Vacancies.
3127. Surrender of charter.
3128. Petition—Proceedings.
3129. Official acts cease with decree.
3130. Vested rights not affected.
3131. Constructing harbor.
3132. City may do the work.
3133. Contract.
3134. Map and profile—Estimate.
3135. Appropriation of land.
3136. Condemnation.
3137. Notice of appraisement.
3138. Report.
3139. Possession after tender.
3140. Appeals.
3141. Assessments are liens—Foreclosure.
3142. Harbors—Slips—Docks—Regulating.
3143. Owners to repair.
3144. Notice.
3145. Construction.
3146. Plan and estimate.
3147. Return of assessment.
3148. Assessments, how collected.
3149. Liability of city—Superintendent.
3150. Proceedings.
3151. Sewers—Drains—Cisterns.
3151*a*. City may construct levees—Procedure.
3151*b*. Contract—Payment—City orders.
3151*c*. Jurisdiction of city extended—Plans.
3151*d*. Clerk's duties—Sale of land.
3152. Aid to roads, bridges, etc.
3152*a*. City may purchase stock in bridge company.
3153. Aid to railroads, hydraulic companies, etc.
3154. Jurisdiction beyond limits.
3155. By-laws—Penalties.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3096. Meetings—Casting-vote—President pro tempore. 46. The mayor and common councilmen of said city shall constitute the common council; and shall meet within ten days after the annual election, and at such other times as they shall, by resolution, direct. The mayor shall be the presiding officer of the common council, and shall have a casting-vote in all cases when a tie, but not otherwise. The presiding officer, in the absence of the mayor, shall sign all contracts, licenses, permits, and other instruments as the mayor might do; and they shall have like effect.

1. The members of a city council are not personally liable for their official acts, unless they act corruptly, 32 Ind. 239; 27 Ind. 485.

2. The city is not liable for the *individual acts* of a *member* of the council; only the council, unless it is otherwise provided, can act and bind the city, 15 Gray, 106; 24 N. J. Eq. 143; 35 N. J. L. 404. But notice to a councilman is notice to the city, 74 Ind. 378.

3. The *inhabitants* of the territory embraced within the corporate limits, and not the officers, constitute the *corporation*, 100 Ind. 575; 97 Ind. 1; but the citizens can not confer on the council power not given by law, 47 Mich. 115.

4. The council can not *delegate* the power of the city, 38 Ind. 348; 62 Ga. 645; 65 Mo. 620; 56 Ill. 354; nor can the council delegate its own powers to a city officer, nor devolve upon him a duty imposed upon it by the general law,

52 Ind. p. 416; 63 Ind 155; 66 Ind. 396; 34 O. S. 194; 57 How. Pr. 500; 6 N. Y. 92; 57 N. Y. 591; 54 Md. 499; 43 Mo. 359; 46 Mo. 100; 52 Mo. 133; 77 Ill. 59; 36 Cal. 239; 68 Mo. 115; 1 Dutch (N. J.) 309; 2 Dutch (N. J.) 444; 34 N. J. L. 163; as to a street commissioner, 2 Swan (Tenn.) 364, see also 73 N. Y. 73; 47 Wis. 386. But when expressly authorized by an act of the legislature, it may delegate its power, 57 N. Y. 591; 34 N. J. L. 163.

4. The *mayor* is a *member of the common council*, 60 Mich. 600. It is a very common practice, in the enacting clause of an ordinance, to recite that it is ordained by the mayor and common council; and the same practice occurs in reports of officers required to make reports to the council. Any reference to the mayor in such instances is entirely unnecessary, and adds nothing to the validity of such ordinances or reports.

5. The clause authorizing the appointment of a president *pro tem.* would seem to authorize him to act as the mayor of the city in the absence (which includes his death) of the latter; and unless it does, in case of the death of the mayor, a city must do without a head until there can be an appointment by the council, § 3050*a*. Notwithstanding the broad language used in the statute the supreme court has held that the presiding officer could not sign a precept, no reference, however, being made to this section, 32 Ind. 130. See 1 Jones (N. C.) L. 49.

6. Special election at first meeting, § 3098.

7. Any member of the common council has the right to visit any "orphan's home" or home for "destitute children" in the county, acts 1889, p. 215, § 9, El. Sup. § 887.

Order of Business for the Regular Sessions of the Common Council.

A—Opening and referring Sealed Proposals for Public Improvements.
B—Reports from Committee on Contracts.
C—Communications, etc., from the Mayor.
D—Reports from Official Boards in the following order:

		COUNCILMEN.		
1.	Hospital Board	____	____	____
2.	Board of Public Improvements	____	____	____
3.	Dispensary Board	____	____	____
4.	Board of Health			
5.	Board of City Commissioners			

F—Reports from Standing Committees in the following order:

		COUNCILMEN.		
1.	Accounts and Claims	____	____	____
2.	Bridges	____	____	____
3.	Contracts	____	____	____
4.	Education	____	____	____
5.	Finance	____	____	____
6.	Fire Department	____	____	____
7.	Judiciary	____	____	____
8.	Natural Gas	____	____	____
9.	Markets	____	____	____
10.	Office Fixtures and Supplies	____	____	____
11.	Ordinance	____	____	____
12.	Printing	____	____	____
13.	Public Charities	____	____	____
14.	Public Health	____	____	____
15.	Public Light	____	____	____
16.	Public Property	____	____	____
17.	Railroads	____	____	____
18.	Rules	____	____	____
19.	Sewers and Drainage	____	____	____
20.	Streets and Alleys	____	____	____
21.	Water	____	____	____
22.	Rental	____	____	____

G—Reports from Select Committees.
H—Messages and Papers from the Board of Aldermen.
I —Appropriation Ordinances.
J —Introduction of General and Special Ordinances.
K—Introduction of Miscellaneous Business.
L —Ordinances on Second Reading.
M—Ordinances on Third Reading.
N —Unfinished Business.

Special orders may be taken up immediately after "Reports from Select Committees" if so ordered by the council.

Resolution for Meetings of Common Council.

Resolved, That meetings of this common council be held on the first and third Mondays of each month, at 7.30 p. m., in the council chamber of this city.

Adjourning Over to Special Meeting.

Resolved, That this common council adjourn to meet in this chamber on Friday, the ——— day of ———, 18—, at 7.30 p. m.

Appointment of Presiding Officer.

Resolved, That A. B. be and he is hereby elected presiding officer of this council until it is otherwise ordered.

Sec. 3097. Stated and special meetings. 47. The common council shall hold stated meetings at least twice in each month; and the mayor or any five councilmen may call special meetings. A majority of all members to which the wards are entitled shall be a quorum; and the minutes of every such meeting shall be kept by the city clerk, which shall be open to public inspection.

1. There is no statute requiring the mayor to sign the minutes, 52 Ind. 411. Clerk's duties, see 3068, and amendment of record, § 3068, *note*. At a special meeting the council may transact any business it sees fit, and is not limited by any restriction inserted in the call, 21 N. Y. 296; 14 O. S. 31; 35 O. S. 10; 36 La. Ann. 641; 14 Neb. 24; 5 E. L. and Eq. 16; 24 Ind. 514; 28 Ind. 161; unless it is business of which notice by publication was first required to be given, 72 Ind. 218; 5 E. L. and Eq. 16, S. C. 17 L. T. 225. The council, by resolution, may adjourn from a regular meeting over in special session; but less than a quorum can not do so, 22 Minn. 218; 21 N. Y. 296; 11 Vt. 385; 24 N. J. L. 718; 5 N. Y. 22; 1 B. and A. 936; 22 N. Y. 128; 5 E. L. and Eq. 16; 1 La. Ann. 412; 36 L. Ann. 641; 73 Cal. 365. The call should be set out at length in the records of the council; but if it is not, the fact of the call may be shown by other evidence, 28 Ind. 161. Service of notice may be proved by the acknowledgment thereof of the councilmen upon the face or back of the call, 106 Ind. 203. The necessity for a special meeting can not be inquired into by the courts, 68 Ind. 507; 28 Ind. 161; 24 Ind. 514; 95 Ind. 567. The mayor (or five councilmen) has not only the power to determine when a special meeting shall be called, but what notice shall be given, and how and by whom it shall be served. Upon these points his decision is final, and can neither be annulled nor set aside by the courts. This is especially true after the council has met and transacted business, 95 Ind. 567; 68 Ind. 507. The mayor may serve it, or the marshal, or any one else; and it is not necessary that a return of service be made before the time of holding the meeting, 104 Ind. 123. On appeal to the circuit court, in any matter appealable thereto, the notice for a special session need not appear in the record, 98 Ind. 100.

2. The notice should be a written one, signed by the mayor and attested by the city seal. In case five councilmen call a meeting, the seal, of course, must be omitted. The service should be personal, but if a councilman can not be found, service may be made by leaving a copy of the call at his last and usual place of residence. It should be served a reasonable time before the hour of meeting; but there is no limit to the length of time it must be served before the hour of meeting. If issued and served only a few minutes before the hour set for the meeting, it will be sufficient, especially if, by reasonable diligence, the members of the council could reach the place of meeting by the time set. All the members of the council must be served, or the meeting will be illegal. 2 Str. 1051, S. C. Co. Temp. Hardw. 147; 4 B. & C. 441; 2 Burr. 734; 1 Str. 584, S. C. 2 Ld. Raym. 1359; 2 H. L. Cas. 789; but the fact that a councilman is not within the limits of the summons, and can not be served, will excuse rendering of service of the notice upon him, and those assembling may lawfully transact business, 5 Burr. 2682, 2601; 2 Burr. 731, 733, 735, 2 H. L. Cas. 789. So if a member is not served with notice, but is present, the omission to notify him is cured, and the meeting will be valid, 52 Mich. 528 (but see 4 Ad. & El. 538); if he consents to the council proceeding to the transaction of business, 8 East. 543; 52 Mich. 528; 36 Minn. 176. So if *all* the councilmen and mayor were to meet, in the council chamber at least, and perhaps any place within the city, and unanimously proceed to the transaction of business of the city, the meeting would be legal, 52 Mich. 528; 36 Minn. 176; 22 Minn. 218; 1 Dill. Municipal Corp. § 264. After consent given and the transaction of business entered upon, it can not be withdrawn, 1 Dill. Municipal Corp. § 264. In some states the statute expressly requires the notice to be in writing, or the peculiar phraseology used requires it, 36 Minn. 176; but there is no reason why, under our statute, the notice may not be a verbal one, especially when it bears such evidence of genuineness as to leave no doubt in the mind of the councilman of its authenticity. The notice may also be by mail; but the difficulty would be to prove that it was received; and both that and a verbal notice ought not to be relied upon, 47 N. W. Rep. 280.

3. The presumption is, that all special meetings were regularly and duly called, 22 Minn. 218.

4. The notice should not only state the day and hour of meeting, but the place, if a place different from the usual meeting place is selected.

5. A *quorum* consists of at least one member more than the number of wards; thus, if there are nine wards, ten councilmen are necessary to constitute a quorum, 19 Ind. 344; 20 Ind. 315; 8 Ind. 34; 65 Md. 125; 48 N. J. L. 395; 45 N. J. L. 251; 47 N. J. L. 208. If a quorum is present, and a majority of those present vote in favor of a measure, it is carried, even though such number be less than a majority of those elected. Thus, if there are ten councilmen in the city, six constitute a quorum; and if six are present and four vote in favor of a measure, and two against it, such measure is carried, 10 Wend. 658; 45 Ill. 255; 45 N. J. L. 251; 16 Ia. 284. So where three of the six members of the council vote in favor of an ordinance, but the remainder, being present, remain silent, the mayor may give the casting vote and the ordinance will be adopted, 121 Ind. 206, S. C. 41 Alb. L. Jr. 143; 113 Ill. 137; 37 O. S. 227. The mayor can not be counted as a councilman in order to make out a quorum, 113 Ind. 79. If, however, a special statute requires a majority of all members elect in order to carry the measure, there must be such a majority, and not a majority of those present, 5 Cal. 169; see also 21 Cal. 351; 16 Cal. 591; 13 Cal. 540; 20 Ind. 315. So when there were twelve councilmen, and a majority of all elected was required to carry a particular measure; and on balloting there were seven in favor and six against the measure,—by mistake or design, there being one ballot too many,—and the council forthwith declared the measure carried, it was held that such measure, in fact, was not carried, 2 La. Ann. 527. Where a measure requires a two-thirds vote of all the members, and there is one vote less than two-thirds, the mayor can not vote for the measure, and it thus be carried. Such a vote is not a tie vote, 114 Ind. 581.

6. The presumption is, unless the contrary appears from the record, that all members were present and acted, 22 Minn. 218.

7. If there is a quorum present at the opening of the meeting, but during the session enough members absent themselves from the council chamber, so

that in no sense can it be said that they are present, to render those remaining less than a quorum, business must cease, until enough return to make up a quorum, or until the next regular meeting. Those remaining can not adjourn over in special session, 22 Minn. 218. In ascertaining the number necessary to constitute a quorum, two councilmen for each ward must be counted, even though there is a vacancy in one or more of the wards.

8. Less than a quorum can not attend to any business, and all acts of those attempting to hold a meeting are void, 113 Ind. 79; 114 Ind. 581; 22 Minn. 218; 10 Wend. 658; 20 Ind. 315; 13 Ind. 58; 16 Cal. 591.

Notice of Special Meeting.

To the Members of the Common Council of the City of ———.

Notice is hereby given that a special meeting of said council is hereby called, to meet in the council chamber of said city at 7.30 p. m. on the ——— day of ———, 18—.

[City Seal.] A. B.,
Mayor.

[Any five councilmen may sign the above call, without affixing the seal.]

Return of Service.

I, E. F., upon my oath state that I served the annexed notice upon C. D., etc., by reading the same to them [*or*, by copies thereof left at the last and usual place of residence of each of them].

E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.

A. B.,
Mayor.

[City Seal.]

[1881 S., p. 174. Approved April 14, 1881, and in force September 19, 1881.]

Sec. 3097*a*. Breaking quorum in common council. 153. Whenever it shall happen that a quorum shall not be present or voting in the common council of any city of the State of Indiana, at any stated or special meeting thereof, by reason of the willful or intentional absence of any member or members of the same, or of his or their refusing to vote, or to answer to their names on any vote or roll-call, any member of such common council so refusing to vote or to be present or to answer to his name, with the intent to defeat, delay, or obstruct legislation or legislative action or the business of such common council, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars nor less than one hundred dollars. [R. S. 1881, § 2059.]

Indictment.

[*Title and Caption.*] That A. B., on, etc., at, etc., being then and there a duly elected, qualified, and acting member of the common council of the city of ———, a city situated within said county and incorporated under the general law for the incorporation of cities, did then and there unlawfully, willfully, and intentionally refuse to vote at a regular meeting of said council then and there held, at which said A. B. was then and there present, although duly called on

so to do, upon a certain ordinance then and there introduced providing for the [*here describe the character of the ordinance, resolution, or motion*]; there not being then and there a majority of said council voting for or against said ordinance, owing to the failure of said A. B. to vote as aforesaid; and the said A. B. so failed to vote as aforesaid with intent then and there to defeat legislative action by said council, and particularly upon the ordinance aforesaid, contrary, etc. Gillett's Indiana Criminal Law, § 350.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3098. Officers. 48. At every such first annual meeting, the common council shall appoint, by ballot, a chief engineer of the fire department, three commissioners to form a board of health, and, in their discretion, a sealer of weights and measures, and as many supervisors of streets, to act under the direction of the street commissioner, as they may deem necessary, and all other officers which the by-laws may create or require, unless, for a good cause, deemed inexpedient at that time. And the common council may, by ordinance, prescribe such rules and regulations, in addition to those herein contained, for the qualification and official conduct of all city officers, as they may deem for the public good, and which shall not be inconsistent with the provisions of this act. And the common council may authorize any city officer, except the mayor or city judge, to appoint, with the concurrence of the common council, one or more deputies.

1. For appointment of *deputies*, see § 3043, *note and form*. This section is broader in conferring the power of appointing deputies than § 3043.

2. In addition to the officers named in this section, the council elect every two years a city attorney, civil engineer, and street commissioner, § 3043. The officers elected by the common council are city officers, 100 Ind. 15, 19. The supervisors must act under the direction of the street commissioner; and his duties can not be devolved on them by the council, 59 Ind. 364.

3. If the appointment is not made at the first annual meeting, it may be done at any subsequent meeting, 22 Minn. 218.

4. Until the council has established a board of health (§ 3106, cl. 35) commissioners for a board of health can not be elected. In case no such board is created, the mayor and council, *ex officio*, act as a board of health, § 4993, under the supervision of the state board.

5. If there is a tie vote under this section, it is usually claimed that the mayor can not give a casting-vote; but there is no reason why he may not then give a casting-vote by ballot.

Entry of Election.

On motion of A. B. the council proceeded to the election by ballot of officers for the ensuing year. For the office of chief engineer of the fire department, C. D. received five and E. F. three ballots; and thereupon C. D. was declared duly elected to said office of chief engineer for the ensuing year, etc.

SEC. 3099. Ordinances. 78. All by-laws and ordinances shall, within a reasonable time after their passage, be recorded in a book kept for that purpose, and shall be signed by the presiding officer of the city, and attested by the clerk. On the passage or adoption of any by-law, ordinance, or resolution, the yeas and nays shall be taken, and entered on the record.

1. For proof of ordinance, see § 3066, *note*. The signature of the mayor is not essential to the validity of an ordinance, 52 Ind. 411. Posting printed copies in the ordinance book is sufficient, 36 Ill. 177.

2. The words "ordinance" and "by-law" are synonymous, 117 Ind., p. 225. Ordinances may be recorded at any time after their passage, 31 Pa. St. 515; 24 How. 364; 72 Mo. 380. There is nothing requiring that they be set out at length in the council's records; a mere reference to them by title or description is sufficient.

3. The "yeas" and "nays" need not be entered in the ordinance book, but must be entered, on the passage of the ordinance, in the records of the council. If not so entered, the council may order the entry of the result to be made *nunc pro tunc*, 77 Ind. 542; 64 Ind. 319; it can not be shown by parol, 64 Ind. 319. In an action against the city, for damages caused by negligently constructing a sewer, it is not necessary for the plaintiff to show that the ordinance under which the city acted was regularly adopted. It is enough to show that the city assumed to adopt it, and under it constructed the sewer, 107 Ind. 75. So in a suit on a contract with a city it is not necessary to show the contract was duly entered of record, 116 Ind. 15. In an action against a city, based upon an ordinance, no affirmative averment as to the particular manner of its adoption is necessary, the presumption being in favor of the regularity of the proceedings by which the resolution was adopted, 107 Ind. p. 236. On *nunc pro tunc* entries, see § 3068, *note*.

[1889, p. 342. Approved March 9, 1889. In force May 10, 1889.]

SEC. 3100. Penal ordinances — Publication. 57. Every by-law imposing a penalty or forfeiture for the violation thereof, shall, before the same shall take effect, be published two weeks consecutively in some newspaper printed in the city: *Provided*, That in case of insurrection, riot, pestilence, conflagration, or other impending danger, requiring the immediate operation of such ordinance, it shall take effect as soon as proclamation is made thereof by such common council and posted at five public places in each of the wards of such city: *Provided, further*, [That] the common council shall have discretionary power to direct the publication of any ordinance in a daily newspaper; and the publication thereof for one day each in any two consecutive weeks in any daily paper shall be deemed sufficient to allow the same to take effect: *Provided*, That when no paper is published in such city, printed or written copies of such ordinance shall be posted up by the city marshal, in at least five public places in each ward of such city for two weeks, before the taking effect thereof. *Provided, further*, That whenever any city shall publish any of its ordinances in book or pamphlet form, such publication shall be of itself a sufficient publication, and such ordinance or ordinances shall take effect two weeks from the date of publication, appearing upon the said book or pamphlet. Any such publication in book or pamphlet form, if the same shall purport to be printed under the authority of the common council of such city, shall be presumptive evidence in all courts and places of the ordinances therein contained, and of the date of adoption, and that the same are properly signed, attested, and recorded. [El. Sup. § 695.]

1. See § 3232*a*. On *proof of publication*, see § 3064, *note* 3. The publication must be in the English language, 26 O. S. 49; 50 Mo. 22. An ordinance

not imposing a penalty or forfeiture need not be published; in other words, no ordinance need be published unless a penal action, and such as an action can be maintained upon it for a violation of its provisions, 121 Ind. 331; 6 Ala. 88. The publication may be at any time after its passage; but the manner of publication must be directed by the council; and if not so directed, a publication made by the clerk under the first clause of this section would not be valid, 10 Conn. 435, 567. The mode of publication provided by statute must be observed, 38 N. J. L. 110, 113; 3 Dutch (N. J.) 265. Only two insertions in a weekly or daily paper are required, if an insertion is made in each of the two weeks, 56 Ind. 253. If so defective as to require a supplemental ordinance to cure the defect, this last ordinance must also be published, 117 Ind. 221. The publication can not be in a Sunday newspaper, 87 Ind. 58. The ordinance goes into effect two weeks after the first publication, and not on the day of the last publication, 56 Ind. 253; or at any time thereafter as provided for in the ordinance, 95 Ind. 70. A provision in an ordinance that it shall be in force from and after its passage and publication, will put it in force after its statutory publication, 95 Ind. 70. Errors or slight variations from the original does not vitiate the publication, 88 Ill. 109; 87 Ill. 389; nor does a greater number of publications than is required by statute invalidate the ordinance, 2 C. S. C. R. 84.

2. The constitutional provision with respect to the sufficiency of the title of a statute does not apply to a city ordinance. The *title of an ordinance* may be anything the council sees fit to make it, even though it is totally foreign to the contents of the ordinance, 25 Ind. 490; 100 Ind. 575. In fact, there is no statute requiring a title to be affixed to an ordinance; but if it is, the title will be considered a constituent part of the ordinance and will be used in order to uphold it, 52 Ind. 411.

3. The council can not pass an ordinance for the punishment of an act performed outside the city limits, 38 Ind. 49; except in a few specified instances. See § 3106, cls. 4, 11; § 3155; 109 Ind. 466.

4. The power to pass an ordinance or by-law implies the power to repeal or modify it, unless the power is restricted in the law conferring the right, or unless such change or repeal would affect a vested right under a regulation lawfully adopted, 103 Ind. 252; 69 Mo. 26; 12 East. 22; 6 How. (U. S.) 511; 6 Wheat. 591; 3 Mich. 342. It continues in force until repealed or annulled by the council or legislature, 43 Ind. 480; 7 O. S. 355; 45 Ala. 310 (constitutional provision); 105 U. S. 278; 111 U. S. 716; 35 N. J. L. 419; 111 N. Y. 1; 37 Me. 52. The repeal of an ordinance puts an end to all prosecutions under it, unless there be a saving clause attached, 56 Ill. 285; 68 Mo. 588; 79 Ala. 495; 4 Mo. App. 357.

5. The absence of an ordaining or enacting clause is not fatal to an ordinance, 52 Mo. 424; 112 Ill. 121; 57 Mich. 396.

6. All ordinances must be *reasonable*, and not in conflict with the statutes or constitution of the State or with the laws of the United States, 107 Ind. 502; 58 Ill. 102, S. C. 11 Am. R. 52; 145 Mass. 384; 66 Ia. 249; 7 Lea (Tenn.) 134; 140 Mass. 485; 32 Minn. 364; 63 Mich. 396; 44 Hun. 166; 49 N. J. L. 391; 47 N. J. L. 286; 85 Ind. 276; 100 Ind. 575; 87 Ill. 303; 79 Ill. 567; 68 Mo. 541; 112 U. S. 69; 118 U. S. 356; 26 Fed. Rep. 611; 12 Pa. St. 318; 29 N. J. L. 77. They must not be *oppressive* in their character, 8 Humph. (Tenn.) 707; 53 Mo. 582; nor unreasonable and partial in *restraint of trade*, 52 Cal. 606; 49 Md. 217. They must be *impartial and fair*, 107 Ind. 502; 45 N. J. L. 246; 12 N. Y. Leg. Obs. 38; 7 Paige, 261; 36 La. Ann. 247; 60 Cal. 78; 114 Ind. 332; 78 Ill. 405; 96 U. S. 521; 3 La. Ann. 688; 3 Allen, 545. But if general in its application, the mere fact that it is peculiarly applicable to a particular person, does not render it void, 83 Ky. 420; but it can not select out particular individuals by name and impose burdens on them, 2 Swan (Tenn.) 364; 78 Ill. 405. They must not *contravene common rights*, 5 Conn. 391; 8 Conn. 247; 5 Day (Conn.) 22; 30 Wis. 316; 29 Wis. 307, S. C. 9 Am. R. 576; 54 Tex. 388; 61 Md. 297; 2 Gr. (N. J.) 222. The *validity* of an ordinance is *for the court* and not for the jury to determine, 100 Pa. St. 368; 3 Pick. 462; 52 Cal. 606; 57 N. Y. 591; 1 Met. 130; 44 Mo. 547; 5 Cush. 438 (*contra*, 30 Wis. 316). But if the *legislature authorizes* the council to pass an *unreasonable ordinance*, the courts can not hold it invalid, 29 Ill. 317; 12 Minn. 41; 112 Ind. 15; 44 N. J. L. 350; 54 Mo. 17, 36. They

must not *infringe the spirit* of or be repugnant to the policy of the State as declared in its general legislation, 3 O. 427; 33 Fed. Rep. 659; 54 Md. 499; 60 Cal. 78; 18 O. 523; 9 O. S. 439; 11 O. S. 688; 12 Wall. 349; 4 Hill, 209; 34 N. J. L. 172.

7. The *penalty* may be fixed on a *sliding scale*, if fixed within reasonable limits, 117 Ind. 221; 27 Ala. 55; 7 Jones (N. C.) L. 281; 24 U. C. Q. B. 238; 34 Minn. 1 There may be one penalty for the *first offense*, a larger for the *second*, and a still larger for the *third*. 3 B. & P, 434; but an ordinance can not multiply *one offense into many*, and punish each one. Rice (S. C.) 158. It can not exceed in *amount* the sum of one hundred dollars, § 3155.

8. Courts give ordinances a *reasonable construction*, and are inclined to *uphold*, rather than to *overthrow*, them. 52 Ind. 411; 2 Md. 449; 26 Conn. 406. The same rules of construction apply to ordinances as do to statutes, 68 Cal. 294; but the strict rules of construction applied to penal statutes do not apply to penal ordinances, 4 La. Ann. 335; 14 La. Ann. 318; 2 La. 427; 55 Tex. 76; yet, if *highly penal* in its nature, it will be construed strictly, and it must clearly embrace the offense charged, 1 B. Mon. (Ky.) 261; see 79 Mo. 210. Their *validity* may be *tested* by plea or answer in an action to enforce them, or to recover the penalty, 5 Cush. 438; 2 R. I. 154. They may be *void in part* and *valid in part*, the same as a statute, 16 Pick. 121; 8 T. R. 356; 2 Cush. 562; 45 N. J. L. 288; 39 L. Ann. 247; 10 Met. 382; 45 N. J. L. 318; 35 O. S. 507; 33 Minn. 69; 34 Minn. 1.

Enacting Clause of an Ordinance.

SEC. 1. *Be it Ordained by the City of* ———: That, *etc.*

Enforcement and Publication Clause.

SEC. —. This ordinance shall be in force from and after its passage, and publication for two weeks consecutively in the *Weekly Argus* of said city, [*or*, and publication for two consecutive weeks in the *Daily Argus* of said city,] the first of which shall be on the ——— day of ———, 18—, and the last on the ——— day of ———, 18—, (*the second publication should be one week from the first,*)] [*or*, and publication for two weeks by printed or written copies thereof posted up by the city marshal in five public places in each ward of said city.]

Emergency Clause.

SEC. —. Whereas, a conflagration is now prevailing in this city requiring the immediate operation of this ordinance, the same shall take effect as soon as proclamation is made thereof, by the marshal, under the order of this council, by reading the same at the city-hall door, and posting copies thereof in five public places in each of the wards of this city.

[1883, p. 50. Approved and in force March 1, 1883.]

SEC. 3100*a*. Advertising in daily papers. 1. In any county in this State containing a city with a voting population of 16,000 and over, as shown by the poll of the last general election, and having published therein three or more daily newspapers of general circulation therein, all advertising required by law growing out of the duty of any city, county, or township officer, executor, administrator, guardian, trustee, assignee, or any unofficial person or persons, or a corporation, in a suit by such corporation, shall be done in some one of the daily newspapers of said city, of general circulation in said city and county. [El. Sup. § 2.]

Sec. 3100*b*. Party interested may designate paper. 2. In all advertising contemplated by the provisions of the preceding section, the plaintiff or party ordering the advertising, shall have the right to designate the paper in which said advertising shall be done, excepting as to the printing of the delinquent list. [El. Sup. § 3.]

Sec. 3100*c*. Laws repealed. 3. All laws, or parts of laws, in conflict with the provisions of this act, are hereby repealed. [El. Sup. § 4.]

See §§ 3232, 3232*a*, and 3100*d*. This act was repealed, acts 1883, p. 77, El. Sup. §§ 6 and 7, and then revived, acts 1883, p. 134. El. Sup. §§ 8 and 9.

[1889, p. 431. Became a law without governor's signature, March 11, 1889.]

Sec. 3100*d*. Legal advertising in large cities. 1. In all cities containing a population of 10,000 or more inhabitants, as shown by the last preceding census, all legal advertising required by law, pertaining to affairs connected with the city government, shall be made in a daily newspaper of general circulation in such city, if one be published in said city. [El. Sup. § 10.]

Sec. 3100*e*. License notices. 2. All notices of application for license to retail spirituous, vinous, or malt liquors, and all notices of the sale of real estate for delinquent taxes, or by any sheriff, administrator, executor, or commissioner, when the applicant for such license resides in or the real estate to be sold is situated in said city of 10,000 or more inhabitants, as shown by the last preceding census, shall be made in a daily newspaper of general circulation in such city if one be published in such city. [El. Sup. § 11.]

Sec. 3100*f*. Number of publications. 3. It shall be sufficient to make such publication one time each week on a given day, for the number of weeks now required by law, but the fees for such publications in a daily newspaper shall in no case exceed the fees allowed by law, if such publications had been made in a weekly newspaper. [El. Sup. § 12.]

See §§ 3100 to 3100*c*.

[1881 S., p. 240. Approved April 7, 1881. In force September 19, 1881.]

Sec. 3100*g*. Publication, how made. 60. Publications of legal and other official matters printed in the English language shall be lawful if published in any newspaper of general circulation published in the county. [R. S. 1881, § 1279.]

See § 3232.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3101. Expulsion of officers. 88. Any member of the common council may be expelled or removed from office by a two-thirds vote of the whole number elected; but not a second time for the same offense. Any officer of such municipal corporation, whether elected or appointed, may be removed by a like vote. The com-

mon council shall make provision in their by-laws or ordinances as to the mode in which charges shall be preferred and the hearing of the same had.

1. If charges are preferred against the city attorney, civil engineer, or street commissioner, a two-thirds vote is essential to his removal, 32 Ind. 74; but without charges preferred, the council may, at its pleasure, remove him by a majority vote, § 3043; 32 Ind. 74. All other city officers, whether elected by the council or by the people (19 Ind. 481), can be removed only upon charges preferred and by a two-thirds vote, 32 Ind. 74. By a majority vote the council may dispense with the services of the street commissioner, and require the marshal to perform the duties of such commissioner, 32 Ind. 79. While the street commissioner, or any other officer, remains in office, the council can not devolve his duties on another, 59 Ind. 364; nor create a fire-board and confer upon it the duties of the chief of the fire department, to the exclusion of the latter, 100 Ind. 15. The council may investigate trustees of the city waterworks (§ 3278), prefer charges against and remove them, 119 Ind. 481.

2. Courts will not *restrain* the common council from proceeding to hear and investigate charges preferred against a city officer, and from removing him; 119 Ind. 481; but if it illegally remove him, *mandamus* will lie to compel his restoration, 32 Ind. 74; 119 Ind. 481; 9 Wis. 254. The declaration of a *vacancy* in the office when none in fact exists, can not be construed as an expulsion or removal, 88 Ind. p. 328; 1 Dutch (N.J.) 536; 20 Wis. 72. Power to remove has been held to give the power to suspend an officer for a certain or uncertain length of time, 26 Mo. 496; 54 N. H. 183; 64 Mo. 493; 20 Mich. 176; but see 59 Ind. 364.

3. Before removal for cause, the officer is entitled to *personal notice* of the proceedings against him, and where the trial will be held, 10 H. L. Cas. 404; 7 O. pt. 2, 414; 5 Ind. 165; 79 N. Y. 582; 106 N. Y. 64; 90 Mo. 19; 24 How. Pr. 216; but notice is dispensed with by an appearance, 2 S. & R. 141; 1 Manl. & Sel. 697; 2 Ld. Raym. 1240; by a total desertion of the place, 1 B. & Ad. 936; 11 Mod. 75, S. C. 2 Ld. Raym. 1275, unless he returns and is in his place at the time of the proceedings, 4 Burr. 2089. There must be a *charge* or charges specifically stated, not, however, with technicalty, 1 Bush. 176. He is entitled to reasonable time to *answer*, to *produce testimony*, to *cross-examine witnesses*, and to be *heard by counsel*, 7 O. pt. 2, p. 414; 1 Burr. 540; 2 Burr. 734; 12 Pick. 244. Unless admitted the *charge* must be proved, and mere silence is not an admission, 8 T. R. 356; 12 Pick. 244; 1 East. 562. While *mandamus*, as we have seen, will lie to restore an officer illegally removed (32 Ind. 74), or where the charge is not sufficient to authorize the removal, 2 Ld. Raym. 1240; 15 Pa. St. 241, yet if all the proceedings are regular, courts will not inquire into them collaterally, nor examine the merits of the controversy, 52 Pa. St. 125; 35 Barb. 254 (but see 21 Fla. 652).

4. The *effect of the removal* is that the office becomes vacant from the time of the amotion, and thereafter, if he continues in office, he is a usurper, 1 Vent. 302; 2 Ld. Raym. 1566, S. C. 1 Barn. 265.

5. The *members* of the council causing the removal are not *personally liable*, unless actuated by malice and want of probable cause, 1 East. 555, S. C. 3 Esp. 278; Cl. & Fin. 289; 17 Ind. 169.

6. Where the removal is without charges, no notice of the intention to remove is necessary; the removal may be summarily performed. But he is entitled to actual notice of his removal, and to compensation until he receives such notice, 2 N. Y. Leg. Obs. 396. Notice in a newspaper is not enough. *Id.*

7. Before any action can be taken for the removal of an officer under this section the council must pass a general ordinance providing for the trial of officers, 18 Bull. 340; 19 Bull. 175.

Removal Without Charges Preferred.

A. B. is hereby removed from the office of city civil engineer; and the city clerk is directed to notify him of such removal.

Notice of Removal.

To A. B.:

You are hereby notified that at a regular meeting of the common council of the city of ———, State of Indiana, held at the council chamber, on the ——— day of ———, 18—, you were removed, without charges preferred against you, by said council, from the office of civil engineer of said city.

C. D.,
City Clerk.

Ordinance for the Trial and Removal of City Officers.

SEC. 1. *Be it ordained by the Common Council of the City of* ———: That any member of this council or any voter of said city may prefer charges against any officer thereof. The charges shall be in writing, and be filed with the clerk, who shall lay them before the council at its next meeting. If preferred by a member of this council, they shall be signed by him, but if preferred by any one else, they need not be signed.

SEC. 2. Such charges shall be referred to a committee of three members of the council, who shall examine into the same; and they shall report in writing at the next meeting of the council (unless further time be given by the council) if, in their opinion, there be good grounds for the accusations contained therein.

SEC. 3. If said committee report that there are good grounds for such accusations, the council shall at once refer such charges to the city attorney, who shall redraft and present in due form, numbering each specific charge, the same forthwith to the council, or at the next meeting thereof, at the option of the council; and the same shall be marked "filed" by the clerk. But if such committee report that there are no good grounds for such accusations, then no further steps shall be taken, unless the council refuse to accept such report and refer such charges to the city attorney for presentation in due form, as aforesaid.

SEC. 4. When such formal charges shall have been filed with the city clerk by the city attorney, the mayor shall issue a summons to the city marshal, requiring the accused to appear before said council, at a certain hour named, to answer such accusations, on a day therein named, not less than five nor more than ten days from the date of issuing the same; which summons said marshal shall serve upon the accused by reading the same to him, or by leaving a copy thereof at his last and usual place of residence.

SEC. 5. At the hour set for trial, the council, if not in regular session, shall be called together in special session, either by the mayor or five councilmen thereof, as a trial court. Evidence shall be taken in such cause, the attendance of witnesses enforced by subpœna or attachment; and all proceedings generally shall be the same as in actions or suits at law. The accused shall be required to answer such charges, and shall have the right to call witnesses, produce evidence, and be heard either in person or by counsel.

SEC. 6. At the conclusion of the evidence and argument, a vote *viva voce* shall be taken on each separate charge; and if two-thirds of the whole number of the councilmen elected shall determine that the accused is guilty of any one of such charges, he shall be deemed removed from his office. Sentence of removal shall at once be pronounced by the presiding officer of the council.

7. When a charge is preferred against a member of the council, he shall have no vote in any of the proceedings instituted against him. If the mayor shall be such accused person the council shall appoint one of its own members president *pro tem.*, to serve as such until such charge be determined; but such appointment shall not have the effect to deprive said mayor of the right to perform the duties of his office, except to preside over the council during his trial.

SEC. 8. During the trial the council may adjourn from day to day, or from one day over to any other, until the same is completed.

SEC. 9. This ordinance shall be in force from and after its passage.

SEC. 3102. City seal. 49. Each common council shall cause to be provided a corporate seal, around the margin of which shall be

the name of such city and the word "Indiana," and in the center thereof, such device as the common council may direct; and such seal shall be affixed to all instruments or writings needing authentication.

1. The seal is kept by the mayor, § 3062, subject to the clerk's right of access thereto, § 3068. When acting as a justice of the peace the mayor does not use the seal, 64 Ind. 226.

2. The corporate seal attached to an instrument, attested by the signature of the proper officer, is *prima facie* evidence that it was lawfully placed there, 7 Humph. (Tenn.) 553; 9 Heisk. (Tenn.) 518. A newly-elected mayor, on entering into his office, may maintain mandamus against his predecessor to compel him to deliver over to him the seal of the city. 7 Cush. 226; 19 N. H. 215; or he may maintain replevin, 21 Pick. 148; 44 Me. 374 (*contra*, 24 Mich. 466), if there be no contest over the right to the office, 17 Ia. 525.

Sec. 3103. Streams and ferries. 50. The common council shall have exclusive power to keep open streams, and preserve, and, if necessary and expedient, change the course of rivers passing through or bordering upon the corporate limits of such city; to prevent encroachments or injury to the banks thereof, or the casting into the same of offal, dead animals, logs, or rubbish; and, within the corporate limits of such city, to establish and regulate ferries across such streams and rivers; to license any person or persons or corporation to keep such ferry or ferries, and exact a reasonable fee for such license; to designate the kind of boats to be used at such ferries, and the times and places of landing; and to prescribe the rates of ferriage to be charged at such ferry or ferries. And whenever the bank of such stream or river shall be a public highway or public wharf or commons within the limits of such city, the common council of such city shall have full and exclusive power to authorize the use of any part or parts of such bank as a landing-place for such ferry or ferries: *Provided, however*, That no new ferry or ferries shall be thus established within one mile below or above an established ferry, unless the common council of said city shall determine, by the votes of two-thirds of the members of such common council, that public convenience requires the establishment of such new ferry or ferries: *And provided, further*, That if any person be aggrieved by the establishment of such new ferry or ferries, or by the action of the common council in fixing the rates of ferriage, he shall have the right to appeal to the circuit court of the proper county, upon filing bond in the city clerk's office, within thirty days thereafter, payable to such city, with security to be approved by such clerk, and conditioned for the due prosecution of such appeal, and the payment of all costs if judgment be rendered against such appellant; and the city clerk shall cause such bond, with a certified copy of the proceedings of said common council, and all of the original papers of the cause, to be filed in the office of the clerk of such circuit court within twenty days thereafter, and such cause shall be docketed for the ensuing term of such court, and further proceedings had and judgment rendered therein as in other cases of appeal.

1. So far as *procedure* with respect to *streams*, this section is modified by § 3166 and the following sections.

2. A mere power "to regulate ferries" does not confer authority on the council to exact a license and prohibit the running of a ferry unless a license is first obtained, 25 Ind. 283; 26 Ind. 193. Since these decisions the statute has been changed.

3. The board of county commissioners is exclusively authorized by statute (R. S. 1881, §§ 4881 to 4888) to regulate the hours during which a licensed ferrymen is required to keep his ferry open and run his boats, and a city ordinance providing inconsistent regulations is not enforcible; but regulations of the city that are reasonable and not so inconsistent may be adopted, and applied even to ferries plying between this and another State. License fees may be exacted of such ferrymen under penalty if they live within the State, 118 Ind, 337. A ferry right may be lost by a non-user, 35 Ind. 19. For proceedings to appropriate, see 38 Ind. 223.

Sec. 3104. Contracts. 52. No member of the common council or other officer of such city shall, either directly or indirectly, be a party to or in any manner interested in any contract or agreement with such city for any matter, cause, or thing by which any liability or indebtedness is in any way or manner created against such city; and if any contract should be made in contravention of the foregoing provisions, the same shall be null and void. No officer of such city shall purchase any bond, order, claim, or demand whatever against such city, during his continuance in office for any sum less than the amount specified therein; and any bond, order, claim, or demand purchased by any officer of such city, in contravention of the foregoing provision, shall be forfeited to such city, and no action shall ever be maintained thereon.

1. This section does not disqualify a councilman so he can not vote on a petition to issue bonds in aid of a railroad company because of his being a stockholder and officer of such company, 57 Ind. 152. Nor does it apply to where a holder of the city's bonds agrees with it that they shall be assigned and transferred for less than their face value to a trustee who is a member of the council, even though such trustee contributes voluntarily to a fund for the payment of such bondholder a sum equal to his proportion of the taxes necessary to pay off such debt, 59 Ind. 400. This section does not apply to a town, 77 Ind. 307.

2. But this section does apply to a marshal having a contract with the city to bury dead animals, 69 Ind. 244; or to a member of the board of health having a contract with the city to vaccinate the school children of the city, 75 Ind. 156; or to a contract by the city with the city judge for the use of his office as a city court-room, 79 Ind. 166. It is a crime for a city officer to be interested in a city contract, § 3226*a*.

Sec. 3105. Salaries. 51. The common council shall, within one month after the annual election in each year, fix the salaries of all the officers of such city provided for in this act, and by ordinance provide for the payment of the same; which salaries shall be paid on the first days of January, April, July, and October in each year, and, when so fixed, shall not be increased during that year: *Provided*, That no member of the common council shall be allowed a greater sum than one hundred and fifty dollars in any one year for all services rendered by him as such member.

The city council has full power over the salary of all city officers, either to increase or lessen them, 69 Ind. 244. For salary of aldermen and councilmen in

large cities, see § 3059. A resolution fixing the salary of an officer must be enacted by taking the yeas and nays; and if no entry of that fact is made, it can not be proved by parol; but an entry *nunc pro tunc* may be made of that fact, and the employment then shown by the record, 64 Ind. 319; see § 3078, *note*. In an action by an officer against the city to recover for his service, a copy of the ordinance must be set out as an exhibit, 69 Ind. 244. The salary must be accurately determined and fixed on a certain basis by the council. In case of the treasurer, it may be a percentage on the taxes levied, but it can not be on the taxes collected during the year, 74 Ind. 133. See § 3094, *note*. If the salaries are not fixed within the time limited by this section, no doubt they may be at any time thereafter, 22 Minn. 218.

Salary Ordinance.

SEC. 1. *Be it ordained by the Common Council of the City of* ———: That the salaries of the city officers for the year beginning on the ——— day of ———, 18—, and ending on the ——— day of ———, 18—, shall be as follows, to wit:

Mayor, $———, and all fees received by him in actions brought before him because of a violation of penal ordinances of the city.

City clerk, ... $———.

Etc.

SEC. 2. This ordinance shall be in force from and after its passage.

Appropriation Ordinance No. ——, 18—.

AN ORDINANCE APPROPRIATING MONEY FOR THE PAYMENT OF SUNDRY CLAIMS AGAINST THE CITY OF ———, ON ACCOUNT OF ———.

SEC. 1. *Be it ordained by the Common Council of the City of* ———: That the following named persons be allowed the amounts set opposite their respective names, from any moneys in the city treasury not otherwise appropriated, as follows:

Name.	Nature of Claim.	Dollars.	Cts.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

[1873, p. 50. Approved and in force March 10, 1873.]

SEC. 3106. Control of finances—Powers. 53. They shall have the management and control of the finances of the city, and of all property, real and personal, belonging thereto; and shall have the additional powers herein permitted, and may make and publish by-laws and ordinances necessary to enforce the same. The common council shall have the power to enforce ordinances—

See general welfare clause, § 3155, and *notes*.

1. *Extent of jurisdiction.* The legislature has the absolute power to designate the limits over which the jurisdiction of municipal corporations shall extend, and its judgment upon that question is conclusive, 109 Ind. 466. But a city or town can not own school property outside of its limits, 56 Ind. 521; nor impose a penalty for visiting houses of ill-fame situated without the city, 38 Ind. 49; nor prohibit cemeteries outside a city, 28 Ind. 79 (see 13 Ind. 134). It may, however, restrict the sale of liquor outside of its limits, and within two miles thereof, 118 Ind. 279; 109 Ind. 466.

2. *Change or repeal of law.* The law under which a city is formed may be changed or repealed at the will of the legislature, 16 How. (U. S.) 369; the political power conferred by the legislature can not become a vested right, 13 Wend. 325; 16 Me. 224; 34 Me. 411; 45 Main 133; 7 Wall. 1; 17 Wall. 322; 64 Pa. St. 169; 116 U. S. 289; 34 N. H. 266; 20 N. J. Eq. 360; 109 Ind. 466; 62 Tex. 728; 8 B. 361; 4 B. 208. "It is one of its [the State's] creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence," 17 Wall. 322; 28 Mich. 228, S. C. 14 Am. R. 202; 63 Ill. 66; R. M. Charlt. (Ga.) 250; 34 Mo. 546; 15 Pa. St. 44; 9 Bush. 189; 3 Oreg. 525; 26 Wis. 432; 4 O. 427; 18 Cal. 590, 31 N. Y. 164; 44 Ind. 524. But the legislature can not deprive the city of local self-government, 118 Ind. 382, 426. On dissolution of a municipality, see § 3319.

3. *Limit of powers.* A municipal corporation can only exercise such powers as are conferred upon it by the laws under which it is incorporated. But if the power is conferred, and no way pointed out how it shall be exercised, the city authorities are necessarily clothed with a reasonable discretion how such act shall be done, 98 Ind. 168, 5 Ind. 38; 78 Ind. 261; 38 Ind. 49; 7 Ind. 86; 8 Ind. 34; 2 How. (U. S.) 422. If an act is authorized, it carries with it all power necessary to secure its execution, 18 O. 523, see 7 O. pt. 2, p. 31. They are "confined within the limits that a strict construction of the grants of powers in their charters will assign to them." Before any power a city proposes to exercise can be used, "it must appear clearly and expressly granted in the enactment under which she acts as a corporation," 5 Ind. 38 (railroad bonds); 9 Ind. 74, 29 Ind. 305; 98 Ill. 491; 93 Ill. 180; 93 Ill. 236; 89 Ill. 195. But when power to do a particular act is conferred upon a city, it takes by implication all the reasonable modes of executing such power which a natural person may adopt in the exercise of similar powers, 29 Ind. 305; 98 Ind. 168; 15 Ind. 395, 411; yet when the way an act must be performed is declared, that way must be pursued, 22 Ind. 88. All acts in excess of its charter are void, 124 Ill. 314. The enumeration of special cases does not, unless the intent is apparent, exclude the implied power necessary for the proper administration of the municipal government, 85 Ind. 276.

4. *Liability for non-exercise of legislative or judicial powers.* "A municipal corporation is, for the purposes of its creation, a government possessing to a limited extent sovereign powers, which, in their nature, are either legislative or judicial, and may be denominated governmental or public. The extent to which it may be proper to exercise such powers, as well as the mode of their exercise, by the corporation, within the limits prescribed by the law creating them, are, of necessity, entrusted to the judgment, discretion, and will of the properly constituted authorities, to whom they are delegated. And being public and sovereign in their nature, the corporation is not liable to be sued, either for a failure to exercise them, or for errors committed in their exercise. But when duties of a purely ministerial character are expressly enjoined by law on such corporations, or arise by necessary implication, they are responsible for any damages resulting to individuals from a neglect to perform them, or from their performance in an improper manner," 29 Ind. 187; 26 Ind. 17; 43 Ind. 197; 25 Ind. 512; 84 Ind. 325; 97 Ind. 1; 120 Ind. 520. Therefore a city is not liable for a failure to have a proper fire department; even though such a one would prevent the loss of a house on fire, 29 Ind. 187; nor to cause a street to be graded, 34 Ind. 471; nor for granting the right of way to a railroad through a street, 26 Ind. 17; nor for failure to undertake the construction of sewers, 79 Ind. 491,

S. C. 41 Am. R. 618; 102 Ind. 372. This power the city can not surrender, 91 Ind. 566; 120 Ind. 520.

5. *Liability for exercise of ministerial duties.* "Where duties of a purely ministerial nature are positively enjoined on them by law, or arise by necessary implication, they are responsible for the damages resulting to individuals, either from a neglect to perform them, or from their performance in an improper manner," 26 Ind. 17. Thus a municipal corporation is liable for injury resulting from a negligent error in the plan of a drain or sewer, 79 Ind. 491; S. C. 41 Am. R. 618; 75 Ind. 241; S. C. 29 Am. R. 135; 30 Ind. 235; 38 Ind. 348; 39 Ind. 282, 112 Ind. 542; 103 Ind. 314; 108 Ind. 7, S. C. 58 Am. R. 22; 96 Ind. 236; 119 Ind. 148. "Skill and care must extend both to the plan and its execution," 79 Ind. 491, 495; S. C. 41 Am. R. 618; 84 Ind. 325; but there is no liability in the selection of a plan unless the selection was negligently made, 112 Ind. 542. The city must exercise ordinary care and skill in maintaining the sewers constructed by it, or adopted as a part of its system of drainage, 84 Ind. 325; S. C. 43 Am. R. 86; 67 Ind. 228; 36 N. Y. 54; 59 N. Y. 500; 91 Ind. 591.

6. *Consequential injuries.* The city is not liable for consequential injuries resulting from the improvements of a public street or the like, in a careful and skillful manner, 84 Ind. 325; 17 Ind. 267; 19 Ind. 326; 6 Ind. 237; 79 Ind. 491, S. C. 41 Am. R. 618; 108 Ind. 7; 119 Ind. 148.

7. *Throwing water in a stream on land.* The city has no right to collect water in a body or stream, and then lead it to a point near the property of an individual, without providing a proper outlet, 84 Ind. 325; 38 Ind. 348; 75 Ind. 241, S. C. 39 Am. R. 135; 79 N. Y. 470, S. C. 35 Am. R. 540; 16 W. Va. 282, S. C. 37 Am. R. 763.

8. *Surface water.* "A city is not liable for injury resulting from surface water thrown from its streets as the result of their skill and proper improvement, but is liable for injuries proximately resulting if it collects the water into a channel and pours it upon another's land," 84 Ind. 325; 72 Ind. 134, S. C. 37 Am. R. 150; 73 Ind. 278, S. C. 38 Am. R. 139; 64 Ind. 167, S. C. 31 Am. R. 114; 67 Ind. 201; 67 N. Y. 204.

9. *Freshets.* "Against extraordinary and unprecedented freshets municipal corporations are not bound to provide, but they are bound to make provisions for such as may be reasonably expected to occur, even though their occurrence be at irregular and wide intervals of time. Ordinary diligence requires that the corporate officers take into consideration the past history of the watercourse, and make reasonable provisions for freshets of a similar character to those which have previously occurred, and which were not of an extraordinary character," 84 Ind. 325; 3 Ind. 236; 52 Wis. 430, S. C. 38 Am. R. 748.

10. *Providing outlets for water.* "Where the system of drainage adopted by a municipal corporation makes it necessary to provide outlets for water accumulated in confined channels, the corporation must exercise reasonable care and skill in providing them, or answer in damages to the property owners who sustain injury from a neglect of this duty. Having created the necessity, the duty devolves upon it to make reasonable provisions for the escape of the water without injury to adjacent proprietors," 84 Ind. 325; S. C. 43 Am. R. 86; 42 Ia. 308, S. C. 20 Am. R. 622; 112 Ind. 542; 104 Ind. 503; 108 Ind. 7.

11. *Must use reasonable diligence to complete work.* In the performance of work in a street, where the city acts ministerially, it must proceed with ordinary diligence, care, and skill. "The work must be prosecuted with reasonable diligence, for the corporation has no right to obstruct the public highways for an unreasonable length of time," 79 Ind. 491, S. C. 41 Am. R. 618.

12. *Care in selection of plan.* "It is, therefore, of paramount importance whether the municipal authorities exercised due care in securing a plan, for if they did exercise such care, then their error is one of judgment which can not create liability. It is, however, negligence for men unskilled in the business of preparing plans for sewers to act upon their own judgment in cases where skill is required. It is their duty to use reasonable care to procure the services of men skilled in such affairs, and if they fail to exercise this care they are guilty of negligence for which the corporation must answer," 112 Ind. 542; 66 Cal. 76; 91 U. S. 540; 42 Ia. 308; 1 Mackey, 427; 123 Ind. 250.

13. *Incidental powers.* A city may sell stock taken by it in a private corporation, under its incidental powers, 94 Ind. 305; 51 Ind. 565; 80 Ind. 159; construct sewers at the public expense, 102 Ind. 372, 376; 28 Conn. 363; 28 N. J. Eq. 187; 2 Grant (Pa.) 291; acquire necessary property, 102 Ind. 372, 377; 41 Ind. 212; 47 Ind. 438; employ counsel to defend its marshal, 103 Ind. 196, S. C. 53 Am. R. 504; 8 R. I. 431; 11 Gray, 340; buy a fire engine, 106 Ind. 129; employ counsel to compromise a city debt, 116 Ind. 15, but not grant the right of way to a street railway to lay a track in the street, 78 Ind. 261; 122 Ind. 344. It may prevent the accumulation of combustible materials within the city limits, 85 Ind. 276. Added or extraordinary powers given a corporation does not take away its incidental powers, 102 Ind. 372, 377; 47 Ind. 438. "The strictness then to be observed in giving construction to municipal charters should be such as to carry into effect every power clearly intended to be conferred on the municipality, and every power necessarily implied, in order to the complete exercise of the powers granted," 7 Ind. 86; 85 Ind. 276; S. C. 44 Ind. 13; 100 Ind. 575, S. C. 50 Am. R. 830.

14. *Failure to enforce ordinances.* A city is not liable for a failure to enforce its ordinances, 88 Ind. 330.

15. *Torts of officers, or breach of contract.* Cities are not responsible for the torts of its officers, or breach of contract, when the acts of the officers are beyond the general powers of the corporation; but they are responsible when the acts of the officers are within the general corporate powers, as the construction of a sewer, 102 Ind. 372.

16. *License or regulate.* Under its incidental powers a city can not require a license to retail intoxicating liquors, 82 Ind. 175; nor prohibit their sale on Sunday under a power to license and regulate, 82 Ind. 175. Previous to the act of 1891 (§ 3232*b*) it could not require a license of pawnbrokers, but it could require them to list all articles pawned with them, and to submit them to the police officers on demand for inspection in order to prevent theft, 26 N. E. Rep. 560.

17. *Manner of entering into a contract.* "The common council can only contract by an order, resolution, or ordinance passed in the manner required by the statute; and where a contract has thus been made, it must be repealed or annulled by a vote of the common council," 43 Ind. 481; 66 Ind. 396. But this rule has been very much relaxed. "Such a corporation may now, through its authorized officers and agents, be bound by parol, provided the contract be not one which the law requires to be in writing," 107 Ind. 232. "Where, however, a common council, properly convened, enters into a contract with an attorney, or where an attorney is employed through the agency of a committee or other authorized person, and has performed services of which the municipality has accepted the benefit, it will be too late, when he asks to be compensated for his services according to the agreement, to object that the contract was not in writing, or that the vote of the council does not appear upon the record of its proceedings. In respect to such contracts, a municipal corporation may be bound by the acts of its properly authorized agents, substantially as a natural person," 116 Ind. 15, 19; 11 Ia. 506; 82 Ill. 259; 105 Ill. 85; 77 Ill. 50.

18. *Ratifying contract.* A city may ratify an imperfect contract, 116 Ind. 15, 21; 103 Ind. 196, S. C. 53 Am. R. 504; 106 Ind. 129; 92 N. Y. 360; 18 Pac. Rep. 287; 116 Ill. 531.

19. *Compromise of claims.* A city may compromise a claim, 124 Ill. 314; 14 Ill. 193.

20. *Arbitration.* It may submit any claim to arbitration, 85 Ill. 563.

21. *Estoppel.* It may be estopped, the same as an individual, 81 Ill. 156; as by the acts of its officers, 15 Ill. App. 122, not acting in its governmental capacity, 115 Ill. 239; but not by their inaction, 81 Ill. 156.

22. *Borrowing money.* A power to purchase property or the like confers upon a city the power to borrow money for that purpose, 78 Ind. 192; 66 Ind. 162; 5 Ind. 38; 19 Ind. 450; 60 Ind. 511, 504; 17 Ind. 437; 22 Fed. Rep. 589; 7 O. pt. 2, p. 31; 11 Wis. 470; 3 R. I. 199; 22 Neb. 614; 9 Wall. 477; 41 Pa. St. 278, and the council has the absolute power to say what evidences of the debt it will

issue, 78 Ind. 192. Money may be borrowed to take up old indebtedness, 49 Ind. 169; 13 Bull. 614; or to buy fire apparatus, 60 Ind. 504.

Sec. 3106. Musical instruments. *First.* To regulate or prohibit the use of hand-organs, or instruments of any annoying character, or other music of itinerant performers, in the streets, lanes, alleys, or public places of the city.

This is valid, 3 Bates Ohio St. Dig. 419; 21 Alb. L. Jr. 176; 140 Mass. 485; 63 Mich. 396, S. C. 30 N. W. Rep. 72, 35 Alb. L. J. 6; 44 Hun. 166 (salvation army).

Sec. 3106. Draining lots. *Second.* To fill up or drain any lot or parcel of ground within such city, or within two miles thereof, whenever water has or may become so stagnant and noxious as to be, in the opinion of such council, a nuisance, and injurious to the health or comfort of such city or any part thereof, at the expense of the owner thereof, under such reasonable regulations as the common council shall prescribe: *Provided, however,* That not to exceed ten per cent. of the value of such lot or land, as the same is valued and assessed upon the tax duplicate for city purposes, shall be expended in filling up or draining the same in any one year.

See clause 51. Constitutional, 16 O. S. 54; 34 O. S. 551. The city is not bound to drain land, even though it contracts to do so, 91 Ind. 566. This clause authorizes the extension of claims beyond the limits of the city, and to this power the law attaches the duties of skill and care in its exercise, 79 Ind. 491; 84 Ind. 325. See § 3106, clause 26. It is discretionary with a city if it will exercise the power of drainage, and it can not be surrendered by contract, 91 Ind. 566. The general drainage law applies to cities. Acts 1885, p. 130; El. Sup. § 1185; formerly it did not, 101 Ind. 539.

Ordinance for Filling or Draining a Lot.

Sec. 1. *Be it ordained by the Common Council of the City of* ———: That whenever it shall be brought to the attention of said council that water upon any lot or parcel of ground, either within said city or within two miles thereof, has become or may become so stagnant and noxious as to be a nuisance and injurious to the health or comfort of said city or any part of it, the mayor, under the direction of the council, shall appoint three councilmen as a committee to examine and report concerning the same.

Sec. 2. Said committee shall proceed to examine said lot or parcel of ground, and report to the council in detail the condition thereof, especially describing the lot or parcel of ground upon which such water is situated, with the owner's name, and stating whether, in their opinion, the water has or may become so stagnant and noxious as to be injurious to the health of said city or any part thereof, and the probable cost of filling up or draining the same, and the amount for which it is assessed for city taxation, and if situated without the city, the amount it is assessed for county taxation, which report shall be filed with the city clerk.

Sec. 3. Immediately upon filing said report, if the committee state that it is so noxious to the health of said city or any part thereof, said clerk shall set a day for its hearing before the council by indorsement thereon, and shall issue to the city marshal a notice to serve on the owner of said lot, or parcel of ground, as follows, as nearly as possible, viz.: *To A——— B———:* You are hereby notified that the common council of the city of ———, on the ——— day of ———, 18—, appointed a committee of three of its members to make an ex-

amination of a lot [*or*, parcel of land] owned by you, reported to have water thereon, which has or may become so stagnant and noxious as to be a nuisance and injurious to the health or comfort of such city, or a part thereof; which committee, on the ——— day of ———, 18—, filed a report with me to the effect that there was such a body of water upon the following described lot [*or*, parcel of ground] owned by you, viz.: [*Describe it*] which water has [*or*, may] become so stagnant and noxious as to be [*or*, will become] a nuisance and injurious to the health [*or*, comfort, *or both*] of said city [*or*, the western part of said city]. You will therefore take notice that said report is set for hearing at 7.30 p. m., on the ——— day of ———, 18—, at the council chamber of said city before the common council thereof, at which time you may state why said lot [*or*, parcel of ground] shall not be drained or filled up, and may produce any testimony you may see fit touching the same.

Witness my hand and the seal of said city this ——— day of ———, 18—.

[City Seal.]

———————————
Clerk of the City of ———.

Sec. 4. Said marshal shall serve such notice on the person therein named, or on his agent in charge of the premises described, if such owner can not be found in the county, by giving him, or leaving one at his last and usual place of residence, a copy thereof, certified under his hand to be a true copy, and make return thereof. Such notice shall be served at least five days before the time set for hearing. In case the owner or his agent can not be found, he shall so make his return; and said clerk shall immediately give ten days' public notice of the pendency of such proceedings, by publication, for ten days each, in a daily, or for two weeks in a weekly, newspaper published in said city. In order to secure a sufficient time for the service of such notice, or for such publication, said clerk may change and reset the time for such hearing.

Sec. 5. At the time set for the hearing, said council, if not in session, shall be called into special session by the mayor, and it shall proceed to consider said report, hear any evidence upon the condition of such lot or parcel of ground; and if it is satisfied that the water thereon has or may become so stagnant and noxious as to be, in their opinion, a nuisance and injurious to the health of such city or any part thereof, it shall so enter its conclusions or findings in its records, and order said owner to drain or fill up the same within a specified time; and if it is not drained or filled up by that time, it shall order the street commissioner to drain or fill the same, or that he let out the work to the lowest and best bidder. *Provided*, That if the same can not be done by an expenditure not exceeding ten per cent. of the assessed value of said land for city taxation (or in case it lies outside of the city limits, an expenditure not exceeding ten per cent. of the assessed value of said land for county taxation), then no more draining or filling shall be required in any one year of such owner than is equal to such ten per cent.; and the remainder of such work shall be completed from year to year at a rate not exceeding ten per cent. of such assessed value.

Sec. 6. If such owner does not drain or fill such lot or parcel of ground, or if he only inadequately drains or fills it, within the time given, said street commissioner shall follow out the order of said council, keeping an exact account of cost of such draining or filling, or the amount of contract, and report the same to the city clerk, who shall certify the amount, with a description of the lot or parcel of land, with the owner's name, to the city treasurer, which amount shall then become a lien on said lot or parcel of land, and shall be collected by the treasurer at the same time, and in the same manner, that he collects city delinquent taxes on real estate.

Sec. 7. The common council may extend the time of the hearing of the report of the committee from time to time until a final hearing is reached.

Sec 8. If the committee report that, in their opinion, the water on such lot or parcel of ground, has not, and will not, become so stagnant and noxious as to be a nuisance to any part of the city, then said clerk shall not set the report for a hearing until ordered to do so by the council.

Sec. 9. This ordinance shall be in force from and after its passage.

Resolution of Reference.

Whereas, It has been brought to the attention of this council that water upon a lot or parcel of land, said to be owned by A. B., situated on Elm street, between Pratt and St. Clair streets, has or may become so stagnant and noxious as to be injurious to the health or comfort of this city, or a part of it; therefore, *Resolved*, That the mayor appoint a committee of three councilmen to investigate and report thereon.

Report of Committee.

To the Common Council of the City of ———:

Pursuant to your order of the ——— day of ———, 18—, we proceeded to examine the lot of land referred to therein, of which the following is a correct description, viz., Lot 13 of Voorhis' addition to the city of ———, county of ———, and State of Indiana, which is now owned by ———. We find that thereon is a large body of water which has [*or*, may] become, in our opinion, so stagnant and noxious as to be a nuisance and injurious to the health and comfort of that part of said city. The probable cost of filling up the same is $———; of draining it, $———. It is valued for city taxation at $———.

C. D.,
E. F.,
G. H.

Clerk's Indorsement on Report.

Filed ———, —18, and set for hearing ———, 18—, at 7.30 p. m.

X. Y.,
City Clerk.

Order-Book Entry.

Whereas, this council on ——— day of ——— 18—, referred to a committee of three councilmen, appointed by the mayor, the matter of the examination of the alleged stagnant water on a lot lying on Elm street, between Pratt and St. Clair streets, said to be owned by A. B.; and,

Whereas, said committee reported on ——— day of ———, 18—, that they had examined said lot, which they described as follows, to wit: Lot 13 of Voorhis' addition to the city of ———, county of ———, State of Indiana, which is owned by A. B.; and that the water thereon has [*or*, may] become so stagnant and noxious as to be, in their opinion, a nuisance and injurious to the health and comfort of that part of said city; and,

Whereas, the hearing of said matter was set by the city clerk for the ——— day of ———, 18—, due notice of which was served upon said A. B. by the city marshal at least five days before the time set for hearing [*or*, by publication for ten days each in the *Daily Argus* of said city], at which time the matter was duly heard; and,

Whereas, it is the opinion of this council and it so finds that said water upon said lot has [*or*, may] become so stagnant and noxious as to be a nuisance and injurious to the health of that part of said city; therefore,

Resolved, That said lot be, and is hereby, ordered drained [*or*, filled up] within ——— days from the date; and if the same is not completed by the time herein given, then it is ordered that the city street commissioner proceed forthwith to drain [*or*, fill up] said lot either by employing a force to do so or by letting the same out by contract, in all things obeying the ordinance in such case made and provided.

[*In case it will cost over ten per cent. of the assessed value the following should precede the resolve:*] and,

Whereas, It will cost $——— to drain [*or*, fill up] said lot, and the assessed value thereof for city taxation is $———;

[*After this, proceed as follows:*]

Resolved, That said lot be, and is hereby, ordered drained [*or*, filled up], by an expenditure of ten per cent. per annum of such valuation for city taxation, until the same is drained [*or*, filled up]. And if said ten per cent. is not expended by the owner of said land by the ——— day of ——— of each year, then the street commissioner shall expend that amount in work thereon, and report the amount thereof to the city clerk.

Street Commissioner's Report to City Clerk.

To the Clerk of the City of ———:

I hereby report and certify that I have expended the sum of $——— in draining [*or*, filling up] lot 13 of Voorhis' addition to the city of ———, county of ———, State of Indiana, as ordered by the common council of said city, [*or*, that I let out the contract for the draining [*or*, filling up] lot 13, etc., as ordered by the common council of said city, to the lowest and best bidder; and that there is due said contractor by reason of such work the sum of $———, that being the lowest and best bid.]

U. Z.,
Street Commissioner of the City of ———.

Clerk's Warrant to City Treasurer.

To the Treasurer of the City of ———:

I hereby certify, as appears from the report of the marshal of said city that he has expended, according to the order of the common council of said city, the sum of $——— in draining [*or*, filling up] lot 13 of Voorhis' addition to said city, county of ———, and State of ———, owned by A. B.; which you will proceed to collect by a sale of said lot the same as if said amount was due thereon for delinquent taxes; and this to you shall be a sufficient warrant for that purpose.

X. Y.,
[City Seal.] Clerk of the City of ———.

Sec. 3106. Firearms and fireworks. *Third.* To prevent or regulate the use of firearms, fireworks, or other things or practices tending to endanger persons or property.

1. 2 Daly (N. Y.) 307; 27 Ill. App. 200, and clause 32. The city is not liable for a failure to pass an ordinance regulating the use of firearms or fireworks, 137 Mass. 171; 42 O. S. 625; nor for not enforcing it after it is enacted, even though the town officers participate in their use, 61 Ia. 83; nor for an injury caused by one licensed by the city to use a shooting gallery on private property, 67 Wis. 343; nor for a suspension of the ordinance, 72 N. C. 55, S. C. 21 Am. R. 451; nor for a failure to abate a steam engine dangerous to adjacent property, when it had the power to do so, 51 Ala. 199; S. C. 23 Am. R. 545; nor for fire and damages for failure to repair reservoir, 69 Pa. St. 420, S. C. 8 Am. R. 272; nor for failure to prohibit dangerous occupation, 117 Pa. St. 414; nor for damage by swine at large, 18 Wis. 83; nor for failure to abate a nuisance, 79 Mo. 319.

2. Storage of gunpowder within the city may be prohibited, 4 Ga. 509.

Sec. 3106. Noxious trades. *Fourth.* To direct the location of tallow chandleries, soap factories, and other buildings or structures; and to prohibit the erection of such buildings, or the continuance of noxious trades or business therein, whenever the health or welfare of the city shall require the same; and, for that purpose, shall have jurisdiction two miles in every direction from the city limits.

See 1 Bay. (S.C.) 382. Touching the two-mile limit, see § 3154. A thing offensive physically to the senses, and thereby making life uncomfortable, is a nuisance, 22 Ill. App. 279; 76 Ill. 322. Unwholesome trades, as slaughter houses, may be prevented in densely populated cities, 98 Ill. 305; 91 Ind. 291; 98 Ind. 73. One has no right to carry on a business in a populous city, unless it can be done without emitting offensive and noxious odors detrimental and offensive to the people of its locality, 24 Ill. App. 647. Privies are regarded as *prima facie* a nuisance, and may be abated if they become nuisances, 76 Ill. 322. Dense smoke from chimneys may become a nuisance, 110 Ill. 405. Mills, or even manufactories, may become nuisances, though usually not regarded as such, 59 Ill. 317; 76 Ill. 322; 73 Ind. 284. As to licensing such houses, see 88 Ill. 221; 25 Ill. App. 200. If city maintain a nuisance it is liable the same as an individual, 60 Ind. 511; 12 Heisk. (Tenn.) 684 (a pesthouse).

Sec. 3106. Cemeteries. *Fifth.* To establish cemeteries or burial-places within or without such city, and to provide for the sanctity of the dead, and to prohibit interments except in cemeteries heretofore established by law.

1. A city may purchase outside its limits, § 3106, clause 45. This does not authorize the city to pass an ordinance subjecting the sextons of private cemeteries to the control of the city sexton, 13 Ind. 134. But the council may pass ordinances to punish the unauthorized disturbance of those buried in cemeteries within the city, and the desecration of their resting places, no matter by whom or where within the city limits they have been buried. If the city has established a cemetery without the city, it has as full control over it as if it had been established within the city limits, 13 Ind. 134. But cities can not prevent the establishment of cemeteries without the city limits; nor control them after established, 28 Ind. 79. A city can not be enjoined from establishing a cemetery within the city limits, 23 Ind. 186.

2. Touching *liability of city* for removing a body, see 30 Ind. 482. A city in Ohio owning a cemetery is liable for injury to an employe of the trustees, caused by the carelessness of the superintendent and the trustees, 41 Ohio St. 149.

3. Cemeteries are not *per se* nuisances, but may become so, 44 Ill. 81. Burials may be prohibited in densely populated districts, 5 Cow. 538; 13 Ind. 134; 13 App. Cas. 446. Time and manner of burial, depth of burial, and use of vaults may be regulated, 17 Brad. (Ill. App.) 476; 4 Strob. L. (S. C.) 306. Unreasonable regulations are void, 16 Pick. 121.

Sec. 3106. Quarantine. *Sixth.* To establish quarantine regulations.

1. This clause is valid, 33 Cal. 279; 1 Bush. 139; 4 Nev. 20; 43 Cal. 242; 64 Tex. 316, 84 Ky. 290; 1 Gil. (Md.) 264. Keeping vessels in quarantine for a specified time does not violate the commerce clause of the federal constitution, 18 Mo. 238; see 19 Mo. 13, and 11 Mo. 103, 41 Me. 363; 45 Me. 496.

2. As to private hospitals, see 77 Ind. 189.

Sec. 3106. Vice and immorality. *Seventh.* To preserve peace and good order, prevent vice and immorality, and quell riots and disorderly assemblages.

Under this clause the city can not prevent the use of steam whistles within the corporation, 3 O. C. C. 214. Touching power of mayor to employ force to suppress a mob, see 5 Gray. 121. The city is not liable for property destroyed by mobs, 12 O. S. 375; 13 Blatchf. 289; 13 B. Mon. 559; 16 B. Mon. 184; 42 O. S. 625; 94 Pa. St. 121.

Sec. 3106. Police. *Eighth.* To establish and regulate the police of the city; and may, in their discretion, authorize the mayor, or a

board of police to be selected by the common council, to make all appointments of officers and members of such police, and give such mayor or board of police full power to remove from office any officer or member of such police for neglect of duty or for other good cause.

1. The city is not liable for the negligence of its police officers; nor for their malicious acts. Such officers are not the agents of the city, but are public officers, 88 Ind. 330. These police officers possess the powers of peace officers at common law as well as those conferred by statutes, 49 Ind. 56. See § 3075 and *notes*.

2. This clause is qualified, by prohibiting the mayor to appoint certain persons policemen, § 3043*a*, acts 1889, p. 301; El. Sup. § 1959. The act of 1889 (acts 1889, p. 222, and El. Sup. §§ 721 to 737), creating a police board for cities having a population of 29,000 is unconstitutional, 118 Ind. 426.

SEC. 3106. Gaming—Houses of ill-fame. *Ninth.* To suppress gaming and gaming-houses, and houses of ill-fame; to prohibit and destroy instruments and devices of gaming; and restrain fraudulent practices within the said city.

1. This section requires an ordinance to put it in force. An ordinance authorizing the arrest and punishment of any person keeping or visiting an establishment for the purpose of gaming, does not authorize the seizure, detention, or destruction of instruments used for gambling, 60 Ind. 371. The word "gaming" under this and the fourteenth clause is used in the same sense in which it is employed in the criminal code (60 Ind. 457); and, possibly, this statute, with respect to gambling, is void under § 3066*a*; same section R. S. 1881, § 1640

2 What is said of so much of the statute as relates to "gaming" being void is probably true with respect to the remaining portion

3. Evidence of reputation as to the character of the house is admissible for the prosecution, and proof of particular acts of lewdness in the house is not absolutely necessary to establish guilt, 93 Ind. 375. For cases under the general criminal law of the State, see 66 Ind. 348; 88 Ind. 228; 102 Ind. 162; 112 Ind. 245.

4. Houses of this nature are nuisances, 25 O. S. 249; 33 Conn. 91. Power to "suppress" authorizes ordinance forbidding renting houses for purposes of prostitution, 3 Sneed, 347; but ordinance prohibiting renting to prostitutes without regard to use to which they intend to put house is void, 54 Tex. 388. Under general police powers lewd women may be prohibited from loitering on the streets, 74 Ga. 516; renting rooms to such persons may be regulated, 14 La. Ann. 37; and such persons may be prohibited from waiting on customers in saloons and restaurants, 43 Mo. 48. But council can not decide that a house is kept for purposes of prostitution, nor order its demolition, 2 Doug. (Mich.) 332. Knowingly associating with prostitutes can not be made an offense, 53 Mo. 582; neither can walking with prostitutes, 4 Bull. 101.

SEC. 3106. Cleansing house or street. *Tenth.* To compel the occupants of any building or out-house situate upon any real estate in such city, that is filthy or unwholesome, to abate or cleanse the same, and to clean the streets and alleys adjoining such property.

This clause requires an ordinance to enforce its provisions. Cases under similar powers, 61 Md. 259 (explaining 49 Md. 217); 24 N. J. Eq. 169; 49 N. J. L. 391. Power to remove "dirt, ashes, rubbish, filth, dung, and soil," does not authorize a by-law for the removal of snow, 5 E. & B. 49. But a power to make "needful and salutary by-laws," authorizes the passage of an ordinance requiring abutting lot-owner to clear away snow on the side-walks, 16 Pick. 504; 11 Allen, 287; 14 Gray 252; but see 88 Ill. 554. See clause 22.

Sec. 3106. Markets and slaughter-houses. *Eleventh.* To direct the location of markets or slaughter-houses or powder magazines, and to regulate the same, and, for that purpose, shall have jurisdiction for two miles in all directions from the city limits.

1. See clauses 29, 33, and § 3107. The city may require owners of powder magazines to remove them beyond the city limits two miles, at their own expense, 81 Va. 636, and may declare them a nuisance, 1 Swan (Tenn.) 213; 18 B. Mon. 800. To keep powder in large quantities in a city is an offense at common law, 2 Str. 1167; 19 Ves. 617; 1 Russ. 321. See English cases, Dears & B. 209; S. C. 26 L. J. Mag. Cas. 196; 2 B. & S. 523; L. R. 72 B. 61, 429.

2. When market-houses may not be located on a street, §§ 3107 to 3109. A city may prohibit private markets within a reasonable designated distance of the public market, 27 La. Ann. 417, S. C. 21 Am. R. 563; 8 Johns, 418; 7 Ia. 102; 10 Wend. 100; 11 Pick. 16; 1 Jones (N. C.) 46; 14 Wend. 87; 13 Ia. 210; 11 Rich. (S. C.) 551; 25 Mo. 37.

3. Under this clause an ordinance can not be passed which requires, for a specified period, that all animals shall be slaughtered in a certain building, the owner thereof paying the owner of the building a certain specified rate for slaughtering the animal. It is invalid, because it tends to create a *monopoly*, 45 Ill. 90. The power to "regulate" includes the power to prohibit the use of a slaughter-house whenever it becomes dangerous to the health and comfort of the community, 82 N. Y. 318, S. C. 22 Alb. L. Jr. 430. But a by-law, that no one shall keep a slaughter-house within the city without special leave of the council, is void, as tending to create a monopoly, 33 U. C. Q. B. 181. There is no vested right to maintain a slaughter-house which has become a nuisance, 50 Ill. 241; 97 U. S. 659, nor can those who maintain it defend as against the State, on the ground that they have a license from the city, 49 N. J. L. 94.

4. A city may resort to equity to prevent the maintenance or creation of a *nuisance*, 11 Allen, 398; 109 Mass. 305, S. C. 12 Am. R. 694 (*contra*, 34 Wis. 450, S. C. 17 Am. R. 446; 7 Paige, 261; 41 Pa. St. 481).

5. Under the power to *regulate* is, of necessity, included the appropriation of one or more parts of the market for one purpose, and another part or parts for other purposes; of providing that free passages through the market be kept open for ready access to shops, stalls, or other places where different commodities are exposed for sale, 23 Up. Can. Q. B. 426.

Sec. 3106. Regulating vehicles. *Twelfth.* To regulate the use of coaches, hacks, drays, and other vehicles for the transportation of passengers, freight, or other articles, to or from points within the city, for hire or pay.

1. See clause 36. A city has power to enact an ordinance authorizing police officers to prescribe the places where hacks shall stand at a railroad depot, and requiring drivers to obey the directions of such officers in regard to the places which their respective vehicles shall occupy, 118 Ind. 41; 27 Minn. 364; 5 Cush. 438; 2 Cush. 562. This clause does not authorize the city to exact a license of non-resident owners of wagons engaged in hauling into and out of the city for hire, 51 Mo 122. This does not extend to private vehicles used by a manufacturer, 46 Mo. 574.

2. Licensing vehicles used upon the streets is constitutional, 45 O. S. 63. Routes for vehicles which tend to hinder traffic may be prescribed, and use of other streets prohibited, 2 Cush. 562. Rates of tariff may be established, 114 Mass. 328; 98 Mass. 1. Stand for hacks, etc., may be established and standing elsewhere prohibited, 122 Mass. 60; but not so as to interfere with the use of adjacent property, 39 O. S. 333; 41 Hun. 117; 7 Bull. 57. Regulations may be made as to standing near places of amusement, 5 Cush. 438, and railroad depots, 27 Minn. 364. A regulation relating to wagons and other vehicles used for hire will not include delivery wagon of merchant, although he charges for delivering goods, 71 Ill. 269; 46 Mo. 574; but otherwise if the provision is as to "vehicles run for profit," 13 B. J. Lea, 545.

Sec. 3106. Liquor licenses. *Thirteenth.* To regulate and license all inns, taverns, or other places used or kept for public entertainment; also all shops or other places kept for the sale of articles [liquors] to be used in and upon the premises.

1. It is evident that the word "liquors" should be inserted in place of the word "articles." It was so taken in 109 Ind. 466, and in 118 Ind. 103. Unless especially authorized to exact a license, a city can not do so, 60 Ind. 327; 40 Ind. 449; 61 Ind. 24; 16 Ind. 337.

2. This clause is *valid*, 39 Ind. 429. When no limit was placed upon the *amount* of the license fee, it was held that a fee of $500 was valid, 39 Ind. 429; so $300, 41 Ind. 7; but not to *prohibit*, 41 Ind. 7; 33 Ind. 507; even on Sunday, 82 Ind. 175; but it may prohibit the sale if a license is not taken out 118 Ind. 103. The fact that the county may exact a license does not prohibit the city, see § 3066*a*, *note*. The validity of the election of members of the city council can not be attacked in a prosecution for a violation of an ordinance requiring a license to be taken out, 29 Ind. 118.

3. Money paid for a license which the city has no power to exact can not be *recovered back*, 51 Ind. 264; 54 Ind. 83; 55 Ind. 14 (overruling 40 Ind. 340; 46 Ind. 552); 61 Ind. 445; unless there is a contract with the council to return it if the ordinance exacting it is held void by the courts, 84 Ind. 31.

4. A license to retail liquor is *not a contract*, and may be annulled by the legislature before the date of its expiration, 77 Ind. 213; 120 Ind. 483. The right to demand a license may be limited to those having a county license, 118 Ind. 114. A city may regulate the sale of fermented cider, 118 Ind. 114.

5. Cities can not require *in amount* over $250 for a liquor license, § 5317 (as amended in 1889, acts 1889, p. 395; El. Sup. § 1684). This act increasing the license fee is valid, 120 Ind. 476, 483. A new license can not be demanded before the old one has expired, when the old one does not limit the sale to any particular place, 119 Ind. 494.

6. Cities may exact a license of those retailing *within two miles* of their limits, § 3154; 109 Ind. 466; 118 Ind. 279; 120 Ind. 483.

7. A license can not be *transferred*, even to the purchaser of the place for which it was issued, 105 Ind. 342.

8. A city may require all *saloons* to be *locked* on Sundays, holidays, and election days, 125 Ind. 6; 26 N. E. Rep. 807. A city may adopt an ordinance requiring all saloons to be closed during the hours between 11 p. m. and 5 a. m., and during such times that all door screens be raised and obstructions removed, so as to give an unobstructed view of the interior, and may require all strangers to vacate said premises, 125 Ind. 404.

Sec. 3106. Licenses for tables, etc. *Fourteenth.* To regulate and restrain all tables, alleys, machines, devices, or places of any kind for sports or games, kept for hire or pay, or to prohibit the use of the same, as aforesaid, if deemed expedient, without a license being first obtained therefor; and, if deemed necessary to preserve peace, good order, and morality, to prohibit the use of the same, as aforesaid, by the infliction of such penalties as this act will permit, to be provided for by ordinance.

1. The power to restrain or regulate tables, etc., is limited to those "*kept for hire or pay*."

2. This clause is *valid;* and an ordinance under it prohibiting bowling alleys is also valid, 7 Ind. 86; even though the prohibition extends only to minors, 60 Ind. 457. An ordinance prohibiting the owner of a billiard table from allowing a minor "to participate in any game of any kind whatever," refers to a game upon the result of which a wager depends; and not to a game played by him for amusement, 60 Ind. 467 (see 62 Ind. 1).

3. A bowling alley is not *per se* a nuisance. 32 N. J. L. 158; nor billiards, 5 Hill, N. Y. 121. An ordinance requiring places of amusement (bowling alleys) to be *closed by a certain hour* is valid, 29 Me. 457; 38 N. H. 426. The city has no power to license a *keno table*, 48 Ala. 199. So an ordinance that does not fix a definite license fee, open to all alike, and does not specify any length of time that it is to run, is void, 117 Ind. 221.

Sec. 3106. Theaters. *Fifteenth.* To regulate and restrain all theatrical and other exhibitions and public shows for which money is demanded or received; and, if deemed expedient, to prohibit the same without a license having been first obtained therefor.

1. This clause is *valid*, 3 Ala. 137; 9 Pick. 415; 15 O. 625; 13 La. Ann. 56; 10 La. Ann. 56; 13 Gratt., 767; 8 Ga. 23; 12 Ala. 173; 7 Md. 1; 2 B. Mon. (Ky.) 134. The city may require one taking out a license to pay, in addition to the license fee, the *cost of issuing* it, 3 Ala. 137. This applies to amateur performances, 10 Abb. Pr. N. S. 216; for legerdemain, not being a theatrical exhibition, see 22 Ala. 73. It includes negro minstrelsy, 4 Lea. 312.

2. These licenses are *not transferable*, 3 Gilm. (Ill.) 96; Morris (Ia.) 199, 473; 9 La. Ann. 430. The city can not require the exhibitor to *pay a police officer* of the city for his attendance at the exhibition, 3 Ark. 110; nor forbid the sale of *reserved seats* after the doors are open and the exhibition commenced, 1 McArthur (D. C.) 581; nor prohibit shows, not immoral, by exacting a high license, 1 O. S. 268; 3 Ala. 137.

3. If the city license and authorize the exhibition of *wild animals* on the streets, it will be liable for all *damages* a private person may sustain by the animals being in the streets. Such an exhibition in the public street is a nuisance, 42 Wis. 643, S. C. 24 Am. R. 435; 49 Wis. 605. But it is not liable for licensing a *shooting gallery* to be held on private ground, 67 Wis. 343. So merely licensing the exhibition of wild animals within the city does not render the city liable for the neglect of the police in permitting the exhibition on the street, 129 Mass. 594, S. C. 21 Alb. L. Jr. 3. A circus may become a nuisance and may be restrained. L. R. 4 Ch. App. 388; 4 Esp. 200.

Sec. 3106. Theaters, proviso. *Sixteenth.* It is expressly provided that lectures on scientific, historic, benevolent, or literary subjects, and the apparatus for the elucidation of the same, and specimens of fine arts, shall not be deemed within the provisions of this act.

The ordinance under this and the preceding clause must fix the license fee, which all persons engaged in the business must pay; and if it does not do that and define the time of the duration of the license to be issued, it is void. If the error is corrected by a supplemental ordinance, such supplemental ordinance must be published, 117 Ind. 221. But see 38 Ia. 96.

Sec. 3106. Driving. *Seventeenth.* To prevent immoderate riding or driving, and cause the person guilty of the same to be stopped thereat by any officer of said city.

See clause 39. Any one driving faster than the ordinance permits may be arrested upon view by a police officer, 48 Ind. 19. Prohibiting driving "faster than an ordinary trot" is a valid exercise of power, 48 Ind. 19. In a prosecution under an ordinance forbidding fast driving, it is not necessary to show that any one was actually hurt; nor can evidence be introduced to show the defendant's general character as a careful driver, 3 Pick. 462. One negligently driving over another is not guilty of assault and battery simply because he was driving faster than an ordinance permitted, 114 Mass. 323, S. C. 19 Am R. 362.

Sec. 3106. Incumbering streets. *Eighteenth.* To prevent the incumbering of streets, squares, sidewalks, and crossings with ve-

hicles, or any other substance or materials whatever, interfering with the free use of the same.

1 See §§ 3161 and 3191, *note*. Construction in Michigan is that this clause does not apply to permanent obstructions, 15 Mich. 54.

2. "Necessity justifies actions which would otherwise be nuisances; this necessity need not be absolute—it is enough if it be reasonable. No man has a right to throw wood or stones into the street at pleasure; but inasmuch as fuel is necessary, a man may throw wood into the street for the purpose of having it carried to his house, and it may lie there a reasonable time. So, because building is necessary, stones, brick, lime, sand, and other materials may be placed in the street, provided it is done in the most convenient manner," 1 S. & R. (Pa.) 217; 1 Denio, 524; 8 O. S. 358, 374; 3 Camp. 226, 231. The materials can be left in the street for only a reasonable length of time, and then, probably, only from want of room elsewhere, 12 Ind. 515; 59 Ind. 592; 83 Mo. 345. The city may temporarily close the street when improvements are being made, 83 Mo. 345. It may take a bond of indemnity from one encumbering the street with materials, 53 Ill. 38. The council can authorize the obstruction of a street only by an ordinance, not by an order. If it proceeds by order to allow building materials to be put in a street, it may revoke the license thus granted at any time. Where sand was placed in the street under such a license, and the owner refused to remove it, the council directed it be removed and placed on the streets adjacent; and in an action against the city it was held that whatever benefits the owner (whose lot was adjacent) received in the increased value of his lot by reason of the street being made better should be set off against the value of the sand removed. A large pile of sand in a street was held to be a nuisance, 27 Ind. 394. A city has full power to remove obstructions in the street, 34 Ind. 304; 36 Ind. 522.

3. If one's business requires the *loading* and unloading of *wagons* in the street so that they encumber it unduly, he must cease his business or move elsewhere, 6 East. 427; 36 Ind. p. 527; as the gathering of carts at a distillery for the reception of slops, 1 Denio, 524; keeping coaches at a stand in the street for passengers, 3 Camp. 226; 8 U. C. C. P. 236; timber by a timber merchant, 6 East. 230; see 6 C. & P. 636; 3 B. & Ald. 184; 67 Pa. St. 355. A highway can not be used as a stable-yard, 3 Camp. 224 (see 10 U. C. Q. B. 354); nor for placing a cart and machinery for the purpose of taking photographs, 24 U. C. C. P. 575; or a projecting show board, L. R. 1 Ex. Div. 349; L. R. 5 Ch. Div. 713; nor for storing railway cars, 23 U. C. C. P. 143 (L. R. 3 Ex. Div. 268;) 91 N. Y. 148; nor with weighing scales, 21 Gr. Ch. (Can.) 129.

4. A city may regulate the *moving of buildings* in the street, 35 N. H. 257.

5. *Doors* or *shutters* opening into the street, or holes in the sidewalk, covered with iron and glass so that they can be safely passed over by pedestrians, are not obstructions, 1 Cush. 285; 51 N. Y. 224, S. C. 10 Am. R. 603; 21 Pick. 292, 297; 104 N. Y. 208.

6. *Buildings* can not be projected beyond the line of the streets, L. R. 2 Q. B. 528; 4 L. T. (N. S.) 599, S. C. 3 DeG. F. & J. 688; 8 E. & B. 469; 4 C. B. (N. S.) 228; 16 C. B. (N. S.) 209; nor a *peanut* or vendor's stand, 73 Ind. 185; 42 N. J. Eq. 136; Bright (Pa.) 318; nor a *stairway*, 56 Ind. 139; 107 Mass. 234; 67 Cal. 130; nor a *market-house*, 5 Port (Ala.) 279; S. P. 30 Ga. 306; nor an *overhanging roof*, 55 N. H. 55; 47 Ind. 133; but a temporary *scaffolding* on a building is not a nuisance, 101 N. Y. 377; nor are *skids* across a sidewalk temporarily for removing merchandise, 101 N. Y. 254; nor *door steps*, when authorized by ordinance, 120 Mass. 330, S. C. 124 Mass. 434, S. C. 122 Mass. 173; 65 Md. 266; nor a *pump* in the street, 26 N. E. Rep. 184.

7. Where a city extends its limits and thereby a *toll-gate* and a part of a *toll-road* comes within the city, and the toll-road becomes a street, the owners of such toll-road may still maintain the gate and collect toll, even though the charter of the city provides that no toll-gate shall be maintained within the city, 37 Mich. 195; 13 Pa. St. 555 (see 6 Oreg. 378, S. C. 25 Am. R. 531). The city can not take charge of so much of such toll-road as lies within its borders without compensating its owners; but it may lay sidewalks along it, grade and

gravel it, and assess the abutting land owners to pay for such work, 30 N. J. L. 395, 225; 27 N. J. L. 35, 217; 26 N. J. L. 445; 2 Mich. 138; 12 Mich. 333; 5 Mich. 336; 17 Hun. 81. See under Ohio statute, 41 O. S. 144; 27 O. S. 584; 17 Bull. 30; 1 Bull. 132; 2 Disney, 516. The *national road* within Indianapolis is a street, 29 Ind. 329.

ADDITIONAL NOTE.

8. *Care, supervision, and control* of the streets being given to a corporation, it may summarily abate a nuisance erected upon a public street which interferes with the free use of the easement on the part of the public, 2 Handy, 236. Hedges, shrubs, and herbage belong to the owner of the fee, and can not be summarily destroyed, unless they interfere with travel, 21 O. S. 248. The right of transit on a public way is subject to such temporary impediments as are caused by the building and repair of houses fronting on a street, and in the construction of sewers, cellar-drains, etc., 8 O. S. 358; but the corporation has the power to properly regulate and control them so as to prevent their becoming a nuisance, *Ibid.* A public road coming into a corporation by the annexation of the territory through which it runs, becomes a public highway within the section, although not accepted by council. 23 O. S. 610. County commissioners can not maintain an action for the obstruction of a county road brought within a municipal corporation by extending its limits, 35 O. S. 1; but they are the proper parties to bring suit for damages for the destruction of a bridge on such road, 43 O. S. 451. Placing a fence or planting a hedge within the limits of a highway does not constitute such adverse possession as will confer title, 28 O. S. 489, 13 O. S. 42. *Kept open, and in repair and free from nuisance.* This implies a duty for the breach of which to the injury of any one the corporation is liable, 1 Disney, 532. The ground of action is either 1. *Actual wrongful acts on the part of the corporation or those acting under its authority*, and here no notice to the corporation is necessary. Where the corporation, by its officers, leaves obstructions or excavations in the streets by which injury occurs, it is liable, 38 O. S. 50; 4 O. S. 80; 9 Mich. 165; 5 N. Y. 69; 8 Ill. 349; 41 Barb. 381; 108 Ind. 530. Or where those acting under its authority do so. It is liable for neglect of contractors where the thing done under its authority is in itself dangerous [*cisterns in street*], 41 O. S. 465; 34 O. S. 638; 17 N. Y. 104; 9 Mich. 165; or where it retains control over the mode and manner of doing the work [*stone in street*], 5 O. S. 38. And the corporation can not by any stipulations in the contract, providing for precautions, or that the contractor shall himself be liable, divest itself of liability, 17 N. Y. 104; 9 Mich. 165; 49 Ill. 476; 40 Mo. 569; 67 Me. 385. The rule of *independent contractor* applies only when the work to be done is lawful, and does not constitute a nuisance, and is not in itself dangerous in its character, 4 Wall. 657; 5 N. Y. 432; 85 Pa. St. 247; 3 Gray, 349.

9. *Neglect of the corporation to remove obstacles or make repairs*, caused by the act of its own officers, or otherwise, but here notice to the corporation or its equivalent is necessary in order to fix a liability upon it. *A dead animal* left in the street an unreasonable length of time by which a horse was frightened, was held an obstruction such as to make the city liable, 75 Ill. 530; also a *pile of stones*, 65 Me. 547; also a *tent*, 39 Conn. 376; also a *pole*, 46 Vt. 580; also a *steam roller*, 39 Conn. 435, but not *a machine run by steam* used to repair the street, without negligence, 4 Mo. App. 572, nor a *broken down wagon*, 26 U. C. C. P. 11; also a *rope stretched across the street*, 21 Me. 29; also a *bar-counter left tilted up on sidewalk*, 104 N. Y. 344. Negligent omission to fill up an excavation made by a wrong-doer will make the corporation liable, 16 N. Y. 161. Where sidewalk is out of repair and a loose board tips up when stepped upon by one person, whereby another is injured, corporation is liable, 90 Ill. 61. Corporation is liable for injuries caused by excavations, with its knowledge or consent express or implied, made by adjoining owners for cellar ways, or areas for air or light, 2 Black, 418; 29 Ia. 210; 61 Ill. 287; 15 Kas. 81. But in such case the corporation has its action over against the adjoining owner, 4 Wall. 657; 54 Me. 46; 9 Allen, 17. And, if the owner had notice of suit, recovery against the corporation is conclusive of the existence of the cause of the injury,

of the liability of the corporation, and the amount of damages, 10 Gray, 496; 54 Me. 46; 49 N. Y. 657; and the corporation may, in addition, recover expenses and attorneys' fees, 122 Mass. 100. Where a railroad occupies a street under agreement to keep it in repair, city is liable for injury caused by the railroad failing to do so, 41 O. S. 235; but corporation is not liable for damages to adjacent property resulting from the use of a street by a railroad, under permission, by authority of 41 O. S. 207. Corporation may be liable for accumulations of snow and ice on sidewalks, 9 Col. 415; 44 O. S. 505; 1 Disney, 532; but not for snow falling from roofs of houses, 13 Gray, 59. Show cases for goods can not legally be placed on the street, with permission of the city, so as to inconvenience an adjoining owner, 18 Abb. N. Cas. 123, neither can show windows, which cut off light and air, 33 Hun. 114. Puppet show on one side of street may be enjoined, if it attracts a crowd on the other side, so as to obstruct access to place of business, 15 Abb. N. Cas. 250. In all cases of a public nuisance, to authorize recovery a special damage must be shown, 2 Disney, 516.

10. An *action* for damages can not be maintained by a *private person* against one who obstructs a street, unless he, by reason of such obstruction has sustained some damage peculiar to himself, and not suffered by the public generally. But alleging that an alley so obstructed that egress and ingress to valuable buildings put upon the abutting lot is prohibited, shows a cause of action in the owner thereof, such as is not *common to the public* generally, 123 Ind. 136.

Sec. 3106. Bathing. *Nineteenth.* To regulate the time and place of bathing in the rivers or public waters of said city.

1. Bathing in the sea on the beach near inhabited houses, from which the person can be distinctly seen, is an indictable offense, although the house may have been recently erected, and till then the beach may have been used for men to bathe in great numbers at the place, 2 Camp. 89.

Sec. 3106. Vagrants and prostitutes. *Twentieth.* To restrain and punish vagrants, mendicants, street-beggars, common prostitutes, and their associates.

1. Criminal statute R. S. 1881, § 2134; 59 Ind. 173; 78 Ind. 251. For the general power of cities to punish vagrants, see 11 Mo. 61. It may well be doubted if any part of this clause is valid, for all the persons described in it are punishable under criminal statutes, R. S. 1881, §§ 2001 to 2003. The cases on the subject from a criminal point of view, are 52 Ind. 426, 526; 66 Ind. 348; 83 Ind. 228; 93 Ind. 375; 102 Ind. 156; 105 Ind. 271; 112 Ind. 433.

2. *Generally*, houses of this nature are nuisances, 25 O. S. 249; 33 Conn. 91. Power to "suppress" authorizes ordinance forbidding renting houses for purposes of prostitution, 3 Sneed, 347; but ordinance prohibiting renting to prostitutes without regard to use to which they intend to put house is void, 54 Tex. 388. Under general police powers lewd women may be prohibited from loitering on the streets, 74 Ga. 516; renting rooms to such persons may be regulated, 14 La. Ann. 37; and such persons may be prohibited from waiting on customers in saloons and restaurants, 43 Mo. 48. But council can not decide that a house is kept for purposes of prostitution, nor order its demolition, 2 Doug. (Mich.) 332. Knowingly associating with prostitutes can not be made an offense, 53 Mo. 582; neither can walking with prostitutes, 4 Bull. 101.

Sec. 3106. Animals running at large. *Twenty-first.* To regulate and prohibit the running at large of cattle, horses, swine, fowls, and other animals; and to provide for the impounding, keeping, sale, and redemption of the same, when found in violation of the ordinance in such case provided.

1. See clause 27. If a city keeps a pound in a bad condition, so that animals impounded therein are injured, as by attempting, on account of the low condition of the fence, to jump out, the city will be liable for such injuries.

The provisions of an ordinance for impounding stock must be strictly followed, 74 Ind. 449; 104 Ind. 165. This clause is not affected by the statute authorizing county commissioners to allow certain stock to run at large, 24 Ill. App. 591; 106 Ill. 407. The city may declare that swine running at large is a nuisance, 30 Ill. 459. The killing of a dog prohibited from running at large is not such an unauthorized proceeding as will create a liability for its loss, 3 Ill. App. 453. If a marshal employ an agent to kill dogs in pursuance of the terms of an ordinance directing him to kill them, such marshal is not liable for the killing of a dog by the agent not within the provisions of the ordinance, 53 Ill. 117. To render a person liable to a penalty inflicted for allowing a dog to run at large, he must have participated in the act of suffering him to be at large, 63 Ill. 88; 58 Ill. 221. The city can not authorize the sale of impounded property without a judicial finding that some law has been violated, 45 Ill. 218, 289; 44 Ill. 360. If a pound-master is sued for a conversion of an animal, he can justify his act only by showing his authority—as in the case of an officer acting under an execution. He must show that the animal was in that situation which the ordinance has designated to authorize the seizure, 35 Ill. 417; 103 Ind. 138; 114 Ind. 387; 104 Ind. 165.

2. The animal may be impounded and sold without inflicting a penalty on the owner for letting it run at large, 46 Ark. 296. It is immaterial whether the owner of the cattle reside in the city or not, 98 N. C. 44. Some notice of the seizure and proceedings to condemn the animal seized must be given to the owner under a provision in the ordinance authorizing it, or the ordinance will be void, 10 O. 32; 29 Miss. 247. Yet a notice of the date of sale will be a sufficient notice; because the owner can then bring an action of replevin to test the validity of the seizure, 3 Ired. (N. C.) L. 493; 63 Mo. 42; 6 Ired. (N. C.) L. 268; 4 Ia. 296; 12 Kan. 263. Power to sell must be strictly pursued, or the sale will be void, and the officer a trespasser, 35 Ill. 417; 63 Ill. 50. Notice of sale may be either personal or by advertisement, 3 Ired. (N. C.) L. 493; 12 Kas. 263; 8 B. Mon. 433; 10 O. S. 32. What is running at large, 63 Ill. 88 (*escaped horse*); 21 Ill. 632 (*without owner's knowledge*); 12 John. 433 (*dog following master*); 10 Metc. (Mass.) 382; 53 Ia. 632 (*horse with bridle on*).

Sec. 3106. Removing noxious substances. *Twenty-second.* To prevent the deposit of any unwholesome substance within the city limits, and punish persons guilty of the same. And to remove or destroy putrid animal or vegetable matter, the common council shall have the right to collect the expenses of removing any such unwholesome substance, putrid animal or vegetable matter, from the person found guilty of a violation of the provisions of the ordinance of such city in relation thereto, with ten per cent. damages thereon and costs of suit therein. If the person occupying the premises fail to do so upon notice given, the common council shall have the power to remove such putrid animal or vegetable matter.

1. This clause requires an ordinance to enable the city to avail itself of its provisions.

2. The city can not authorize any one to remove dead animals and convert them to his own use, to the exclusion of the rights of the owner, 77 Mo. 91. But the city may grant the exclusive privilege to an individual to remove dead animals for a number (5) of years, due regard being had with reference to the owner's rights, 84 Ky. 290. For removal of *garbage*, see § 3226.

Sec. 3106. Ringing bells—Peddling. *Twenty-third.* To regulate the ringing of bells and crying of goods, and to restrain hawking and peddling.

1. A private action may be maintained to restrain the ringing of *bells* under certain circumstances, 133 Mass. 290; 146 Mass. 351; 9 E. L. & Eq. 104; 3 W. N. C. 384.

2. Any method of selling goods by outcry on the streets or public places of a city, or by attracting persons to purchase goods exposed for sale at such places by placards or signals, or by going from house to house selling, or offering goods for sale at retail, to individuals not dealers in such commodities, whether they be carried along for present delivery or the sales be made for future delivery, constitutes the person so selling a hawker or peddler within the meaning of the above clause. Any mode of selling goods which does not fall within the meaning of "*hawking and peddling*," as above defined, can not be made unlawful by ordinance, 107 Ind. 502. This clause is valid, and a license may be exacted under it, 57 Ind. 74; but an ordinance requiring only those who are non-residents and who propose to sell goods not manufactured within the county, to take out a license is invalid, 107 Ind. 502. Nor can a city prohibit a citizen of another State from selling goods by sample when such goods are situated, at the time of the sale, in another State, but are to be delivered to the customer in this State. It is otherwise, perhaps, where the goods, at the time of the sale, are situated in this State, although the salesman resides in another State, 26 N. E. Rep. 185. The power to "restrain" confers the power to exact a license, 7 Ind. 86; 57 Ind. 74. *Hucksters* defined, 1 O. S. 268. A state license does not prohibit the city also from exacting a license, 9 O. 290. Delegation of the power to grant a license to the mayor is unlawful, unless the legislature has authorized such a delegation of the power, 5 Bull. 73; 7 Bull. 50.

SEC. 3106. Contagious diseases. *Twenty-fourth.* To remove or confine persons having infectious or pestilential diseases.

See clause 33. Persons afflicted with contagious diseases may be required to remove to a pest-house or hospital, 18 Mo. 401; and nurses and physicians may be provided at public expense to care for and attend them, 59 N. H. 120. If a city erect a pest-house near the premises of an individual and render them unhealthy, so that their occupancy is unsafe or unpleasant, such city will be liable, 12 Heisk. (Tenn.) 684. The city is not liable for the misconduct of its agents and officers in charge of a pest-house, 17 Gratt. (Va.) 375; 31 Ala. 469; 9 La. Ann. 461; 44 Mo. 479; 21 Cal. 113; 35 Ind. 495, S. C. 14 Am. R. 499; 65 Me. 402, S. C. 20 Am. R. 709; 67 Me. 294; 33 Minn. 289; 120 Mass. 432; 140 Mass. 13; 62 N. Y. 160; 103 Ind. 262. The city can not prohibit the sale or dealing in second-hand or cast-off garments, on the ground that it tends to prevent the spread of diseases, 80 Ala. 579.

SEC. 3106. Bills of mortality. *Twenty-fifth.* To regulate the keeping of bills of mortality, and to provide penalties for the neglect of any person in violation of the same.

See board of health, § 4992. Bills of mortality is the common phrase to denote statistics of the dead. Harrison's Municp. Manual (Canada), p. 424 (5 Ed).

SEC. 3106. Water-works. *Twenty-sixth.* To construct and establish works for furnishing the city with wholesome water; and for the purpose of drainage of such city, may go beyond the city limits, and condemn lands and materials, and exercise full jurisdiction and all the necessary power therefor. The common council may authorize any incorporated company or association to construct such works; and, in such case, the city may become part stockholder in any such company or association.

1. For issuance of bonds, see §§ 3114, 3265, for purchase of land, see clause 45. This clause seems to be modified so far as it applies to cities of less than 45,000 population building water-works, in that a vote of the city is necessary

to authorize their erection, § 3265; but so much of it as authorizes cities to allow companies to build, and even to take stock therein, is not repealed, 86 Ind. 484.

2. This clause does not authorize the issuance and sale of bonds for the erection of water-works, 63 Ind. 155. The city may sell the stock it has taken, but its officers can not give it away, 94 Ind. 305. Creating a debt beyond the constitutional limit, see 97 Ind. 1, and § 220, *notes*.

3. A bond given by a superintendent of water-works erected under this clause, where no ordinance requires it, for the faithful performance of his duties, is invalid, 92 Ind. 240.

4. A city is liable for the acts of a contractor building water-works in the street for negligently killing a traveler who does not contribute to his own injury, 70 Ind. 65; 124 Mass. 564; L. R. 10 Q. B. Div. 118.

5. In order to erect works a city can not *divert a stream* of water, 24 Ala. 130; 27 Ala. 104; 29 Ala. 127; 30 Ala. 363; 65 Pa. St. 444; 44 Conn. 521. The city may bore *artesian wells*, under its general power to preserve health, 31 Ala. 542.

6. After notice to city authorities that a service pipe placed in the street by private parties is leaking, and causing injury to premises of others than those who placed it in the street, city is liable, unless it use reasonable care to prevent the continuance of the injury, 18 Bull. 65.

7. The city may adopt *rules and regulations* with respect to the supply of water where it owns the works; but the owner can not be denied the right to have water because his tenant in the building to be supplied has not paid his water-rent, 29 N. J. Eq. 77.

8. If the grade of the street is changed, a water-works company may be compelled to lower its pipes so as to conform to the grade, 106 Ill. 337; or remove them in order to build a sewer, 28 Fed. Rep. 921. Water-works pipes are not an additional burden on the fee of the streets, 33 Kan. 590; 13 N. J. Eq. 420; 57 Ia. 560, but they are in a country highway, 27 N. J. Eq. 552.

9. How far the grant of the right to a company to supply water may be exclusive, see 115 U. S. 674; 35 La. Ann. 1111; 34 Fed. Rep. 145; 28 Fed. Rep. 921; 39 N. J. Eq. 367.

10. The city is not liable for defective supply of water, beyond water rents, 81 Pa. St. 38, S. C. 22 Am. Rep. 731; 123 Mass. 311, S. C. 25 Am. R. 90; 51 Ala. 139; even though loss by fire is occasioned thereby, 28 W. Va. 233; 19 S. C. 412. But the city is liable if it so permits the water to be used in the streets by its agents as to scare horses and cause them to run away, 11 R. I. 141, S. C. 23 Am. R. 434, or by negligence in the construction of the dam causing an injury by being swept away in a freshet, 2 Denio, 433; 3 Hill (N. Y.) 531; or injures any one in their construction, 12 R. I. 449. Water-works can not be sold on an execution issued against a city, though owned by it, 105 U. S. 600.

11. If the owner of a water-power *stands by*, and, not objecting, permits a city, without first assessing and paying his damages, erect water-works for a water supply by drawing water from the stream and thus diminishing his power, he will be *estopped* from afterwards bringing an action for an injunction, and must resort to an action at law, 99 Ind. 531.

Sec. 3106. Public pounds. *Twenty-seventh.* To establish and regulate public pounds.

See clause 21, *notes*.

Sec. 3106. Gas. *Twenty-eighth.* To construct and establish gas-works, or to regulate the establishment thereof by individuals or companies; or to regulate the lighting of streets, public grounds, and buildings; and to provide, by ordinance, what part, if any, of the expense of lighting any street or alley shall be paid by the owners of lots fronting thereon, and in what manner the same shall

be assessed and collected, and to make the same a lien upon real estate.

1. See § 3162, for petition of abutting lot owners.

2. For natural gas, see §§ 3110, 3110*a*; electric light, § 3229*c*.

3. Under this clause the city may enter into a contract with a company, to light the streets, for a long term of years (10); and may exercise such power, within the limits of its franchise, according to its own discretion. Such a contract is regarded as made by the city in the exercise of its power to contract, and not in the exercise of its power to legislate, although the power to make the contract be authorized by an ordinance. When, by the terms of the contract, the city is not restricted in any respect from the legitimate exercise of its public power touching the subject-matter thereof, but expressly reserves its administrative authority to keep the posts, lamps, and burners in good repair, if the company should fail to do so; and also reserves the right to test the quality of the gas furnished by such company, and the capacity of the burners at all times; and is not restricted from extending its streets, establishing an additional number of lamps, obtaining gas from other sources or establishing its own gas-works, as the public interest may require; such contract not being a restriction upon its legislative power, nor fraudulent, nor against public policy, is valid and binding upon such city, may be enforced in the same manner as the contract of a person or a business corporation, and can not be repealed, impaired, or changed by the city in any way, 66 Ind. 396; 31 Pa. St. 175, 185.

4. The city can not *assess* the *cost* of gas-pipes and lamps upon adjacent property; but only the cost of lighting the same after such pipes are laid and posts erected, viz., "the expense of lighting," 33 Ind. 258.

5. Power must be expressly conferred in order to enable a municipal corporation to grant an exclusive right to a company to use the streets for laying down pipes for conveying gas for a term of years, 114 Ind. 332; 18 O. S. 262; 43 O. S. 257; 28 Fed. Rep. 529; 44 Ia. 505. Where an exclusive right has been granted to a gas company to supply the town and people with gas, corporation will not be restrained from authorizing another company to furnish light by electricity, 30 W. Va. 435, 28 Fed. Rep. 529; see 115 U. S. 650, 683, 674; 30 Barb. 24; 84 Ky. 167; 81 Ky. 263.

6. Laying gas-pipes in a street is not an *additional burden on the fee*, 29 Hun. 245; 38 O. S. 445; but it is if laid in a country road, 62 N. Y. 386; 111 Pa. St 35, S. C. 2 Atl. Rep. 105.

7. Without the consent of the city a gas company can not lay its pipes in the street, 114 Ind. 332.

8. If a city owns its gas-works, it is liable, like a private company, for the negligence of its servants and agents, 3 Hill (N. Y.) 531, S. C. 2 Denio, 433; 31 Pa. St. 175; 37 Eng. L. & Eq. 495, S. C. 1 H. & N. 59, 2 H. & N. 204; 122 Mass. 344; 137 Mass 171.

9. A permit to lay pipes in the street for artificial gas does not authorize their use for *natural gas;* nor is a company organized to furnish artificial gas before the discovery of natural gas in this State, to a city which had laid pipes in the streets previous to the time of such discovery, authorized to supply natural gas, 2 Ohio C. C. 237.

Resolution to Light.

Be it resolved by the council of the city of ——— that it is deemed necessary by the council to light ——— street, from ——— to ———, with gas [*or*, gasoline], and the ——— gas company is hereby directed, under the supervision of the street commissioner, to at once erect lamps on said street between the points aforesaid, and supply gas [*or*, gasoline] thereto, in accordance with the terms of the contract between said company and this city.

Sec. 3106. Markets, councilmen may arrest. *Twenty-ninth.* To regulate the management of public property, markets, and market-

spaces, and sales of meats, fish, and vegetables; to prevent, by ordinance, the offense of regrating and forestalling; to appoint market-masters, and to invest them with power to make arrests for the violation of city ordinances in their view; and to make councilmen and all other city officers, conservators of the peace within such city, with power to arrest in like manner.

1. See clauses 11, 33.

2. Regulation of market permits prohibiting sale of fresh meat in less quantities than a quarter, except at market-houses, 7 Ia. 102; 25 Mo. 37; 11 Rich. S. C. 551; and sale of meat in any quantity, except at specified places, 10 Wend. 100. Market limits may be prescribed, 44 Mo. 547; 25 Mo. 37; and opening of other markets prohibited, 31 La. Ann. 544. Occupant of stall, failing to pay rent in advance according to contract, is tenant at will, 11 Ia. 583. Huckster defined, 1 O. S. 268. See 1 Dill. Municip. Corp. § 386.

3. *Regrating and forestalling* is a common law offense, 1 East. 143. They apply only to the necessaries of life—food, 7 Moore N. C. 739; 18 Grant (Can.) 540; 30 Up. Can. Q. B. 92; 24 Up. Can. Q. B. 238.

4. The meat-inspecting law of 1889 (acts 1889, p. 150; El. Sup. §§ 359 to 361) has been declared unconstitutional, 126 Ind. 68.

Sec. 3106. Protecting fire apparatus. *Thirtieth.* To regulate and protect fire engines, hose, hook and ladders.

Sec. 3106. Weighing and measuring. *Thirty-first.* To regulate the selling, weighing, and measuring of hay, wood, coal, and other articles.

Exposure of hay for sale without certificate of weight to show purchaser may be forbidden, 12 Wis. 752. Same of coal, 14 Wend. 87. Weighing may be made compulsory, 34 Ark. 603; 8 Ontario 750; 4 Ontario 401; 2 B. & S. 326; 5 B. & S. 928; L. R. 3 Q. B. 433; L. R. 8 Q. B. 352. Office of weighmaster may be provided and his salary fixed, 1 Jones, N. C. L. 49; 14 Wend. 87. Use of spring scales may be prohibited, 30 U. C. Q. B. 81. See 6 O. S. 604.

Sec. 3106. Board of improvements. *Thirty-second.* To organize a board of public improvements, and empower such board to grant permits to build houses or additions thereto; to prevent the erection of wooden buildings in such parts of the city as the common council may determine; to condemn any building or structure liable to fall and endanger life or property, and provide for the removal and taking down of the same; to take from all persons to whom such permit is granted, or with whom the city shall contract for any improvement liable to endanger persons or property, a bond with sufficient sureties, conditioned that the owners or contractors shall pay all damages that may be sustained by any person or persons by reason of any carelessness or negligence in the manner of making such improvements, and property from injuries thereby.

See general welfare clause, § 3155; see 85 Ind. 276, and § 3106, clause 3. The city may enact an ordinance making it unlawful to erect a building within the city without first making an application to the clerk of the board of public improvements, 105 Ind. 540. So it may provide for the summary removal of a wooden building that has become a nuisance by reason of the surrounding buildings; it may prescribe fire limits, and prevent the erection of wooden buildings therein, and may tear down, summarily, those that have become a nuisance; doing no unnecessary damage to the property, 100 Ind. 575, S. C. 50

Am. R. 830; 99 Pa. St. 306, S. C. 44 Am. R. 109; 2 Yeates (Pa.) 493; 98 Ill. 305, S. C. 38 Am. R. 89; 7 Conn. 349; 12 Me. 403. So any one may raze a house to the ground to prevent a conflagration, 39 Ia. 575, S. C. 18 Am. R. 46; and the city may tear down a *tenement* house cut into small apartments, and calculated to breed *disease*, 15 Wend. 397 (see 16 Wall. 36). So the city may limit the amount of *hay* or *straw*, even to five tons, that may be kept in a square, 85 Ind. 276. See § 3155. Ordinances establishing fire limits are *strictly construed* in favor of the owners of buildings, 108 Ill. 414. All such ordinances are *constitutional*, 72 Cal. 125; 117 Pa. St. 326. A city may even prevent laundry work in anything else than a stone or brick building, 68 Cal. 294; see 113 U. S. 27, 703; 118 U. S. 356. But a court of *equity* will not *prevent* the erection of wooden buildings within fire limits on application of the city; the remedy at law being deemed adequate, 33 Mich. 72, S. C. 20 Am. R. 671; 84 Ala. 126, 127. The owner of a wooden building that he has a right to maintain within the fire limits, may move it from one place to another, within such limits.

Ordinance to Prohibit Erection of Wooden Buildings.

AN ORDINANCE, NO.——, TO PROHIBIT THE ERECTION OF WOODEN BUILDINGS ON THE SQUARE BOUNDED ———.

SEC. 1. Be it ordained by the council of the city of ———, that the erection of any building or addition to any building, unless the outer walls thereof are made of iron, stone, brick, and mortar, or of some of them, is hereby prohibited upon the square bounded as follows: On the north by ———, etc.

SEC. 2. This ordinance shall take effect, etc.

Petition to Remove Building.

———, *Ind.*, ———, 18—.

I, ———, city clerk of the city of ———, hereby certify that the following is a true copy of a certain petition and the action of the board of public improvements and city civil engineer, now on file in my office, to wit:

To the Board of Public Improvements and City Civil Engineer:

The undersigned petitions your honorable board and engineer for the privilege to move a ——— story building, —— by —— feet, over the following described route, to wit: ———.

And your petitioner will ever pray.

_____

Petitioner.

The undersigned, members of the board of public improvements and city civil engineer, do hereby grant the above petition, and recommend that the city clerk issue a permit in accordance therewith.

_____

_____

City Civil Engineer.

_____

Board of Public Improvements.

In witness whereof, I have hereunto set my hand and affixed the seal of said city, the day above written.

_____

City Clerk.

[City Seal.]

SEC. 3106. Market, engine, and pest-houses. *Thirty-third.* To erect and establish market-houses and market-places, engine-houses, houses of refuge, pest-houses, and hospitals.

1. See § 3106, clause 11, *notes*. When unlawful to erect a market-house on a street, without consent of property owners, § 3107; 34 N. J. L. 201; illegal erection may be enjoined, 29 Alb. L. J. 201; 6 Bull. 142; property for may be appropriated, 28 Hun. 515.

2. See § 3106, clause 24, *note*. Purchase of real estate for sanitary purpose, § 3115*a*. The establishment of a market-house does not prevent the city from removing it to another place, or establishing the market elsewhere, 18 Oh. St. 563; 3 Mod. 108; 3 East. 538; 11 App. Cas. 665; 21 L. T. N. S. 582; 1 B. & Al. 67.

3. Under this clause a city can not exact a license of nor regulate the establishment of private hospitals; nor can it under the general welfare clause, 71 Ind. 189.

4. The city can not improve its property held for market purposes, at the expense of the owners of adjacent lots; and if it attempts to do so it may be enjoined, 106 Ind. 66.

5. There are a number of Indiana cases in which it has been sought to enforce a *mechanic's* or material men's *lien* against city or town buildings; and in these cases it seems to have been conceded that this could have been done, 72 Ind. 111; 58 Ind. 492; 57 Ind. 262; 51 Ind. 397; 46 Ind. 438; 76 Ind. 32; but since it has been decided that such a lien can not be enforced against county public property, because contrary to public policy, it may well be doubted if such a lien, properly contested, could be enforced, 100 Ind. 59; 86 Ind. 531, S. C. 44 Am. R. 338; 82 Ind. 190; and it has been expressly decided that such a lien can not be enforced against city public property, 71 N. Y. 498, S. C. 27 Am. R. 80; nor against a city school-house, 102 Ind. 223 (overruling 17 Ind. 225.)

Sec. 3106. Wharves, docks, piers, basins. *Thirty-fourth.* To establish and construct wharves, docks, piers, and basins; and to regulate landing-places, and fix the rates of landing, wharfage, and dockage on all public grounds belonging to such city. All claims for landing, wharfage, and dockage, accruing to said city, shall be a lien upon the boat, vessel, or water-craft contracting the same; and after a demand made by the wharf-master upon the owner or master, clerk, or consignee thereof, and refusal of payment, may be enforced by attachment before the mayor of said city, where the amount does not exceed one hundred dollars, in the same manner and to the same extent that liens on boats and other water-craft are now enforced under the general laws of this State, and all proceedings shall be conformable thereto as far as practicable. And the common council shall have power to compel property-owners owning any lots or parts of lots or lands bordering on any navigable stream, basin, or harbor, made so by nature or artificial means, to build and construct sea-walls for the protection of the banks thereof, in such manner as the common council by ordinance shall prescribe, provided such navigable water, harbor, or basin shall have been improved and used therefor. And for landing further up or beyond, and, if it be deemed necessary to protect the banks of said stream, harbor, or basin along any such lot or part of a lot by sea-walls or otherwise, and upon the failure of such property-owners to make such sea-walls as shall be prescribed by such common council, the common council are hereby empowered to cause such sea-walls to be built by contract let to the lowest bidder; and the cost of constructing the same shall be a lien

upon the property bordering upon such harbors, navigable streams, or basins, or deemed benefited by such improvement; and the lien of the city shall be enforced in the same manner as provided now by law for the enforcement of liens for the improvement of streets and sidewalks: *Provided*, That thirty days' notice of the improvement to be made and the manner thereof shall be given to resident property-owners, by notice served by the city marshal, and by publication in the corporation newspaper four weeks to non-resident property-owners: *Provided*, That the owners of property affected shall have the same remedies by injunction and appeal that is now given by section seventy-one [§ 3165]; *And provided, further*, That four weeks' notice, by publication in the corporation newspaper shall be given by the common council of their intention to pass such ordinances.

1. For construction of levees, see § 3151*a*.

2. All powers of a city with respect to wharves must be derived from the legislature, 6 Ind. 237. A city may build a wharf on property dedicated as a common along a river bank, 3 B. Mon. (Ky.) 183; 8 Dana (Ky.) 61. When a wharf is erected by the city, it must keep it in repair, or pay whatever damages any one may sustain that is injured, in the same manner as if he was injured by a defect in a street, 35 Ind. 19. The city can not charge the owner of a ferry with wharfage; the ownership of the ferry includes the right to use the soil for ferry purposes, 27 Ind. 100; 26 Ind. 193; 25 Ind. 283. A ferry boat is not a "vehicle," and can not be taxed as such, 25 Ind. 283. The right of ferriage may be lost by non-user, 35 Ind. 19. One using a wharf can not defeat a claim for wharfage by showing that it is not in repair, 35 Ind. 19. A claim for ferriage against a domestic vessel is not of admiralty jurisdiction, and may be enforced in our own state courts, 35 Ind. 19. A city can not define the line of high-water mark, and declare that all buildings erected below it are a nuisance, 41 Ind. 145. It is not necessary in order to enforce a lien on a boat for wharfage that the ordinance provide for the enforcement of the lien. When such a delinquency occurs the city may proceed under § 5277 R. S. 1881, which fixes the lien, and have a judgment *in rem* against the boat for the amount due. If the ordinance is authorized by this clause, the courts will not hold it invalid because unreasonable, 112 Ind. 15.

SEC. 3106. **Board of health.** *Thirty-fifth.* To establish a board of health, and to invest it with the necessary power to attain its object.

1. Officers, how and when elected, § 3098. Boards of health all now act in concert with the state board of health, § 4993. If there is no board of health established by ordinance, the mayor and council act as such, under the control of the state board, § 4993. A board of health may be a board *de facto*, and its acts within its sphere of the office is valid, although the ordinance creating it is not legally passed, 29 Ohio St. 261.

2. The city may require school children to be vaccinated; but can not make a contract for the work with a member of the board of health, 75 Ind. 156. The city, under this clause alone, may rent a temporary building for a hospital, especially in case of an epedemic, 18 Mo. 401. But the board of health may not alone of itself abate a tannery, 36 N. J. L. 283; nor prohibit the carrying on of a lawful business, 24 N. J. Eq. 169, with respect to the powers of such boards, see 4 C. B. (N. S.) 576; 16 La. Ann. 317; 39 N. J. L. 122; 49 N. J. L. 391; 43 Ala. 398; 78 Ill. 405; 8 Allen, 325 2 Vt. 427; 6 Jones (N. C.) L. 134; 8 Fost (N. H.) 9; 15 Wend. 262, 397; 18 Wend. 169; 9 Wend. 333; 6 Wend. 651; 70 N. Y. 530. Sale of milk from cows fed on improper food may be prohibited, 43 Cal. 242, also adulterated milk, 73 N. Y. 65; 82 N. Y. 324. Wholesome water may be provided and its purity preserved, 28 Ga. 50; 31 Ala. 542. Def-

inition of slaughter-house, 25 Minn. 372; they may be regulated, 65 Cal. 609, and may be restricted to certain specified parts of city, 37 N. Y. 661. Provision may be made for removal of bodies of dead animals, 42 N. Y. 140, and contract made with an individual to do the work, 12 Bull. 41; 7. Mo. App. 345. Keeping hogs may be prohibited in populous districts, 68 Iowa, 107; 97 Mass. 221; also cattle, 72 Cal. 114.

Form of Ordinance Establishing a Board of Health.

AN ORDINANCE, NO. ——, TO ESTABLISH A BOARD OF HEALTH.

SEC. 1. Be it ordained by the common council of the city of ———, that a board of health consisting of five members for the city of ———, be and the same is hereby established, and that said board shall be constituted and the appointments thereto made by the mayor of said city.

SEC. 2. That the board of health hereby established shall have power to make such orders and regulations as it may deem necessary for the public health and for the prevention of disease, and such orders and regulations shall have all the force and effect of ordinances of this city.

SEC. 3. This ordinance shall take effect, etc.

Notice to Abate Nuisance.

Office of Board of Health, City of ———, ———, 18—.

To ———:

You are hereby notified that on the ——— day of ———, 18—, the board of health of said city adopted the following resolution:

"*Resolved*, That in the opinion of the board of health of the city [*or*, village] of ——— there exists upon the following premises [*here describe as accurately as possible the premises*] a public nuisance, dangerous to life and health, consisting of [*here describe the nuisance*], and the agent, owner, occupant, or tenant of said premises is hereby ordered to abate the same, on or before the ——— day of ———, 18—, by [removing, altering, purifying, etc., in such manner as the board may direct], or the same will be done at the expense of the corporation and the costs and expenses thereof assessed upon said property, and the penalties prescribed by law for disobedience of this order will be enforced. And the clerk of this board is hereby directed to serve a copy of this resolution upon the agent, owner, occupant, or tenant of said premises."

You will comply with said resolution within the time therein specified, or be subject to the penalties of the law.

By order of the Board of Health,

———

Clerk.

SEC. 3106. Hack stands — Rates. *Thirty-sixth.* To establish stands for hackney coaches, cabs, and omnibuses; to enforce the observance and use thereof; and fix the rates and prices for transportation of persons and property from one part of the city to another.

See § 3106, clause 12, *notes*. Hack stands can not be so established as to interfere with the use of adjoining property; and the use of such stands may be enjoined by the property owner, 39 O. S. 333; 41 Hun. 117; 7 Bull. 57. Rates may be established, 114 Mass. 328; 98 Mass. 1.

SEC. 3106. Hotel runners. *Thirty-seventh.* To regulate or prohibit runners at wharves, steamboat-landings, railroad depots and stations, and other places.

See 38 Mo. App. 609; 52 N. J. L. 180; 45 Hun. 41; 43 N. W. Rep. 833.

Sec. 3106. Auctions. *Thirty-eighth.* To regulate the sale of all kinds of property at auction in the streets, stores, shops, or elsewhere in the city, and to license auctioneers, and require them to pay a reasonable per cent. on the amount of sales.

Under this clause a city may adopt a penal ordinance requiring an auctioneer to take out a license, 63 Ind. 468; 124 Ill. 359. For definitions of "auctioneer," see 63 Ind. p. 473; 28 O. S. 479. An ordinance prohibiting auction sales after sun-down is void, because in restraint of trade, 24 Wis. 542; see 35 Hun. 209. A licensed auctioneer is not an officer nor an agent of the city, 3 Pet. 398.

Sec. 3106. Rates of travel. *Thirty-ninth.* To regulate the speed of horses, carriages, locomotives, and other vehicles within the city.

See § 3106, clause 17, and *notes*. For speed of locomotives and trains, see § 3106, clause 42.

Sec. 3106. Bridges, etc. *Fortieth.* To regulate all bridges, culverts, sewers, canal or draw bridges, and the location thereof; and to maintain, regulate, and collect tolls on any plank-road heretofore built and abandoned by the owners in any such city.

1. A city may purchase, condemn and appropriate for public use the shares of stock of any bridge company owning a bridge within the city reaching across the boundary line of the State, acts 1889, p. 205; El. Suppl. 623. A city has exclusive power over the public bridges within its limits, § 3161; 55 Ind. 255; 119 Ind. 196. It is the duty of the city to keep all bridges within its limits, unless toll-bridges run by private individuals or companies, in repair; and if it does not, and thereby any one is injured, the city is liable, even though such bridge is over the old Wabash and Erie Canal, 55 Ind. 250; 119 Ind. 196; 74 Ind. 520.

2. As to the liability of a city in the construction of a sewer, see the note appended to the beginning of this section (3106), and also note to clause 43 may be examined.

3. A city may compel a railroad company to build a *viaduct* over its track where the travel is great, under its general powers without a special statute, 39 Minn. 219.

4. It is the duty of a city to keep a public bridge, within its limits and of which it takes control, in repair, even though such bridge may have been originally *built* and maintained *by the county* as a part of a public highway, and its failure to do so renders it liable to any one who suffers injury thereby without contributory negligence. By taking charge of and improving the highway, the city accepts and becomes charged with the maintenance of such a bridge, 119 Ind. 196; 121 Ind. 379. But a bridge outside the corporate limits, connected with a free gravel road, and constructed by the county, does not, by the fact that it leads up to and adjoins a street at the corporation line of a city or town, become a city or town bridge in such a sense as to relieve the county from the general duty of using reasonable care to keep it in a reasonably safe condition for passage. The city or town is excluded from the control of a bridge so situated, the right of control being vested in the county, 123 Ind. 379. It necessarily results that such city or town is not liable to any one injured by reason of a defect in such a bridge. A city is not bound to provide bridges strong enough for *traction engines*, 26 N. E. 42.

Sec. 3106. Party-walls and fences. *Forty-first.* To regulate the building of party-walls and partition-fences within the limits of said city, and prescribe by ordinance in what proportion the adjoining owners shall bear the expense of the same, and in what manner such expense shall be levied and collected, and define the

terms upon which partition-walls and fences already constructed may be used by adjoining owners.

1. This clause includes the power to authorize the erection of a party-wall or partition-fence upon the application of either owner, and without the consent of the other. Such an ordinance is not invalid because no compensation is provided for the land occupied by the wall or fence, 17 N. J. Eq. 208. The regulations must be strictly followed, 4 B. & C. 269. See 1 D. & L. 116. An external wall is not always a party-wall from that fact alone, 14 L. T. (N. S.) 55. A party-wall is a wall which belongs to two persons as part owners, or divides two buildings, one from another, L. R. 8 Ch. App. 1084. As to ownership and usage, see 5 Taunt. 20. See also L. R. 5 C. P. 564; 15 Am. Rep. 475; 4 C. B. N. S. 584; S. C. 6 C. B. N. S. 606; L. R. 5 Q. B. 443.

2. One who sheds water from his buildings by means of spouts so as to throw it upon the lot of an adjoining lot owner is guilty of a trespass, and liable for the injuries thereby occasioned; and a continued discharge of such water for more than twenty years, merely by sufferance, without any assertion of right on the part of the owner of the building, creates no easement, 126 Ind. 85.

Sec. 3106. Speed of railroad trains — Flagmen. *Forty-second.* To regulate the speed of railroad trains through the city; and also provide, by ordinance, for security of citizens and others from the running of trains through any city, and to require railroad corporations to observe the same; and also to require such corporations to keep clean the gutters and crossings of the streets along which their railways pass.

1. An ordinance restricting the speed of a railroad train to four miles an hour while in the city is valid, 34 Ind. 392; 96 U. S. 521; 67 Ill. 113; 88 Mo. 672. Such an ordinance applies both to the platted and unplatted portions of the city, whether settled or not, 34 Ind. 392; 29 N. J. L. 170; and it matters not that the train is one carrying the United States mail, and if not allowed to run at a higher rate of speed, it could not keep its contract with the government, 34 Ind. 392; 31 Minn. 402. The ordinance applies to switch-yards within its limits, 65 Ia. 658.

2. The city, hereunder, has the power to require the railroad company to maintain flagmen or gates and men to control them at places where it crosses the streets, and possibly even at alleys, most assuredly at public places, 100 Ind. 210; 67 Ill. 37, S. C. 16 Am. R. 611; 111 U. S. 228, *contra*, 45 Ohio St. 98.

3. A city is not liable, however, for a failure to require the railroad company to maintain such a flagman or gate, 100 Ind. 210.

Sec. 3106. Sewers, drains, and cisterns. *Forty-third.* To construct and regulate sewers, drains, and cisterns, and provide for the payment of the cost of constructing the same; to cause the same to be done by contract given to the best bidder, after advertising to receive proposals therefor. To provide for the estimate of the cost thereof, and the assessment of the same upon, the owners of such lots and lands as may be benefited thereby, in such equitable proportion as the common council may deem just; which estimate shall be a lien upon such lots and lands, and may be enforced by sale of the same, in such manner as the common council may provide: *Provided, however,* That not to exceed ten per cent. of the value of such lots or lands, as the same is valued and assessed upon the tax duplicate for state and county or city taxes, shall be assessed against such lot or lands in any one year.

1. The power to construct a sewer is a *continuing* one; and is not exhausted by the construction of one sewer, 45 N. J. L. 482; 100 Ind. 242. For a sewer *tax* in large cities, see § 3061. For liability of a city in *negligently* selecting a plan for sewers, see note at the beginning of this section (3106). The council may pay for a part of the sewer *out* of the *general fund*, § 3151; and may construct one for *surface* or *storm water*, § 3151. Additional power to *regulate* sewers is given under § 3106, clause 40, which, however, may possibly refer to *private* sewers. This clause is *constitutional*, 22 Ind. 491. Clause 51, § 3106, relates to the constuction of *private drains* by one over the lot of another, 47 Ind. 438. A sewer is not an additional burden on the easement of the street, 79 Ind. 491; 28 Conn. 363; 29 N. J. Eq. 206; 28 N. J. Eq. 187, 446.

2. The section that stood in place of § 3161 previous to 1867, conferred power to construct drains and sewers, 47 Ind. p. 440; but power to construct them was not given by the clause in that section as it was passed in that year, but was given by this clause. Under the law previous to 1867 the cost of a sewer could be assessed to adjacent property owners, even as against county property; and the same is true under the present law, 22 Ind. 491; 23 Ind. 381. Under the old law a general *ordinance* was not necessary; but the improvement could be done under a resolution, 22 Ind. 491; 17 Ind. 175. The authority to construct sewers is general, and resides in all municipal corporations, 107 Ind. 75; it also comes within a city's control over its highways, 102 Ind. 372. The *general drainage law* applies to cities. Acts 1885, p. 130, § 2; El. Sup. § 1185. Previous to 1885 it did not, 101 Ind. 539. The city can not by contract *release* its *power to construct* sewers, 91 Ind. 566. The sewer may extend beyond the city limits; and if the highway is used the city is not liable in damages because of the increased burden on the easement, 79 Ind. 491.

3. The assessment of benefits by the council is *final*, and no *appeal* lies from its decision; there is no power in any tribunal to review its action, nor to interfere, unless for fraud and corruption, 43 Ind. 197. But an appeal was allowed from a *precept* to enforce the cost of building a sewer, 65 Ind. 421; 47 Ind. 438. The assessments may be collected by precept, even one issued in favor of the city, if it has paid the assessment, 121 Ind. 331.

4. The city is not bound to let out the building of a sewer by *contract;* it may be constructed under the city officers, 79 Ind. 491; 78 Ind. 1 (explaining 36 Ind. 99). It may make a contract that the contractor take in payment city orders at par for that part charged to the city. The contract may also be changed, without impairing the right to collect the benefits, 22 Ind. 491.

5. The city may contract, although it can not take land by the right of eminent domain, 47 Ind. 438; for the extension of a sewer *through private property*, 102 Ind. 372; 107 Ind. 75. And although the sewer be constructed according to the plans of the owner of such property, yet the city may be liable to any one else injured by reason of the faultiness in the plans, notwithstanding the fact that permission to cross such private property could not be secured only on the condition that the owner's plans be adopted, 107 Ind. 75.

6. After a plan has been adopted and assessments of benefits made, the city can not *change the plan* nor *extend the sewer* without re-assessing all the lands benefited, 35 Ind. 97.

7. The city must keep the sewer in *repair*, and notwithstanding the fact that it had been skillfully constructed it will be liable to any one injured by reason of its not being kept in a proper condition, 107 Ind. 75; 67 Ind. 228. The city is chargeable with notice of its condition, 107 Ind. 75.

8. The *outlet* is a necessary part of it, and the city must provide one, which must be constructed with ordinary care to escape damages, 107 Ind. 75. It may be outside the city limits; and the city may use a public highway, without giving damages to the abutting land-owner, in which to build the sewer, in order to reach an outlet, 79 Ind. 491.

9. The city is liable to any one who *taps* the sewer for his own private benefit, for injuries resulting from the negligent construction or maintenance thereof, 107 Ind 75; but it is not liable to his tenant, even though such tenant, at the time he rented the property, had no knowledge of the defect in the sewer, 52 Ind. 547.

10. In an action against the city for damages by reason of the city's negligence in constructing the sewer, it is not necessary to prove that the *ordinance* directing the construction was regularly *adopted;* it is enough to show that the city had assumed to adopt it, and under it had constructed the sewer, 107 Ind. 75.

11. The city is *not bound to construct* a sewer, unless it sees fit to do so; and the courts will not compel it to build one, nor assess damages against it for failure to construct one, although the plaintiff has suffered great damages by reason of such failure, 107 Ind. 75; 79 Ind. 491, S. C. 41 Am. R. 618; 102 Ind. 373.

12. *Damages* arising from injuries occasioned by *negligence* in the construction of a sewer by the city are not a part of the expense of constructing the sewer, and can not be *assessed* against private property, but must be paid out of the general treasury, 102 Ind. 372.

13. Under § 3151 the power of the city to construct sewers is so limited that it can only be done when necessary to remove surface or storm water from the street, 121 Ind. p. 339.

14. In a *collateral attack* upon the right of a city to enforce an assessment under this clause, every *presumption* will be taken in favor of the action of the city and its officers, and unless the complaint discloses a state of facts which show clearly that the assessments are void, their regularity will be presumed, 121 Ind. 331.

15. If the assessment *exceed ten per cent.* of the assessed value of the property appearing upon the tax duplicate, it is void only as to the excess; and any one seeking to annul the assessment can not complain in a collateral proceeding until he has paid, or offered to pay, all except the excess, 121 Ind. 331.

16. This section is not affected in any way by § 3165*a*. The *ordinance* ordering the construction need not be *published*. The contractors may be paid by the city and a levy for the amount of the assessments be made by installments. In such an event the assessment may be made for the benefit of the city and the *precept* issued in its name. The assessment is not made in accordance with the provisions of § 3163. The benefits to property may be ascertained by a committee by its reporting them to the council, which adopts them as made, 121 Ind. 331.

ADDITIONAL NOTE.

17. Municipal corporations are liable for maintaining a *nuisance*, in the same manner as a natural person, 110 N. Y. 273; 30 Wis. 365. They are liable for *polluting* a natural water-course with sewage, and may be enjoined from doing so, 4 Bull. 345; 2 Clev. Rep. 172; 2 Bull. 135; 110 N. Y. 273. But the right to purity in a stream may be waived by abutting owners, if they permit and participate in the use thereof as a sewer, if an actual nuisance is not created, 9 Rec. 731; 2 Disney, 400. But as to *surface water*, there is no obligation on the part of the municipality to take care of it, and consequently no right of action against it for failing to provide sewerage or drainage, 39 O. S. 665; 32 N. Y. 489; 4 Allen, 41; 35 Pa. St. 324; 33 Ala. 116; 9 Kas. 603. There is no liability for defect in the *plan* of sewerage, the adoption thereof being quasi-judicial, 32 N. Y. 489; 4 Allen, 41; 34 Mich. 125; nor for deficiency in size of drains and sewers, provided there is no accumulation of water that would not otherwise flow in that place, 32 N. Y. 489; 8 Allen, 127; 13 Gray, 601; 9 Kas. 603. But if the corporation by its drainage, whatever be the plan, collects together water which would not otherwise have flowed in that place, and throws it upon private property, it is liable for the damage caused, 35 Mich. 296; 51 Mo. 510; 13 Wall. 168; 41 Ill. 502; 25 Wis. 223. Municipality is liable for not keeping sewers in repair, 4 Allen, 41; 51 Mo. 510; 46 N. Y. 194; and also for negligence in constructing them, or removing obstructions therefrom, 66 N. Y. 295; 52 Ind. 547; 51 Mo. 510; 21 O. S. 499; 2 C. S. C. R. 462. Where council has not prepared a system of sewerage and drainage, as provided in this section, the municipality has power, in the State of Ohio, to construct sewers, 40 O. S. 155, and in every such case each sewer is a main sewer, 2 Bull. 287. The adoption of a system of sewerage, and a plan for districting the city, can only be proved by the ordinances, and

not by the testimony of the city engineer, 2 Clev. Rep. 172; 4 Bull. 345. As to liability for failure to keep private sewer in repair, see 25 O. S. 639.

18. The selection of a proper *outlet* for a sewer is left to the discretion of the council, and will not be interfered with unless gross abuse is shown, 1 Oh. C. C. 229.

19. A wharf on which no buildings are to be erected is properly assessed for sewerage, 1 C. S. C. R. 57. Where, in a sewer district, a sewer is placed in front of a lot and also in the rear in an alley, and the lot has but one improvement upon it, both the rear and the front can not be assessed, unless there is actual drainage from both; neither will the assessment in the district be invalidated by omitting the assessment on one of the frontages, 16 Bull. 287. Where a lot has four frontages, and two are assessed, or is a corner lot and has been assessed for only a part of its frontage, such assessment will not be disturbed by the courts, 16 Bull. 287. It is no valid objection to an assessment that one part of a sewer costs more than another, and that thereby the assessment on one street is higher than it would be if improved alone, 1 O. C. C. 229. A lessee for ten years is not an "owner" within the section, and can not be personally charged with the cost of constructing a sewer, although his lease provides that the lessee shall pay all assessments, 36 O. S. 24. Neither is the owner of an ordinary lease for years with privilege of purchase at a specified price, 2. C. S. C. R. 67. The assignee of a sewer assessment can not maintain an action thereon in his own name, but must sue in the name of the corporation, 2 C. S. C. R. 296.

20. A sewer constructed in the street by private parties, and by them given to the city, is a public sewer, 1 Oh. C. C. 501.

An Ordinance for Sewer No. I.

Sec. 1. *Be it ordained by the Common Council of the City of* ———: That a two-ring sewer be constructed in the center of Fourth street of said city, from the intersection of said Fourth and Broadway streets, extending south to the Wabash river; to be laid six feet below the surface of said Fourth street, to have an inner diameter thirty-six inches across, and to be constructed of hard-burnt brick, laid in Portland cement; the cost thereof to be assessed to the owners of lots abutting thereon, according to the whole length of said sewer, per running foot.

Sec. 2. Said sewer shall be constructed under contract, to be let, after publication for three consecutive weeks in the *Argus-News* of this city, to the lowest and best bidder, who shall give a bond for the faithful construction thereof. The city civil engineer is hereby ordered to prepare plans and specifications for said sewer, and the clerk to advertise for bids for the construction of the same.

Sec. 3. As soon as said contract is let, the city civil engineer shall apportion the cost, according to the terms of this ordinance, among the several lots and tracts of land abutting upon said sewer, and report the same to this council; and as soon as the same is reported by him the city clerk shall issue a notice to the city marshal to serve upon each and every person named in said report, containing the following, to wit: That on the date of the passage of this ordinance said sewer was ordered, a description of its route, the name of the owner, and the description of his lot or tract of land, the amount it, each lot or tract, is assessed, with benefits or costs of said construction, setting a date at which the matter will be laid before this council for confirmation, accompanied with a request that if they have any objections thereto they shall lay the same before this council for consideration. The marshal shall forthwith serve said notice at least ten days before the day set for hearing, and if any one therein named is not a resident of this county, said notice shall be published for three consecutive weeks in the *Argus-News* of this city before said date.

Sec. 4. If, upon examination, the report of said engineer is found incorrect, or for any cause the council may deem essential, it shall be referred back to him, at the meeting it is set for hearing, for correction in accordance with its directions, or the council may correct the same and equalize the assessments.

SEC. 5. After said report is confirmed, the clerk shall enter it at length in the proceedings of this council, and issue a copy thereof, stating when it was so confirmed, to the treasurer of this city, who shall proceed within sixty days to collect the same as benefits and costs are collected upon precept for street improvements. *Provided*, That not to exceed ten per cent. of the value of said lots or lands, so assessed, as the same is valued and assessed upon the tax duplicate for city taxes, shall be assessed against said lots or lands in any one year.

SEC. 6. This ordinance shall be in force from and after its passage.

Notice to Contractors.

Notice is hereby given that sealed proposals will be received by the common council of the city of ———, at the office of the city clerk, on or before 4 p. m., on the ——— day of ———, 18—, for the construction of a sewer in the center of Fourth street of said city, from the intersection of Fourth and Broadway streets, south to the Wabash river. All of said work to be done according to the provisions contained in the ordinance of the common council of said city, entitled "An ordinance for sewer No. 1," adopted ———, 18—, and according to the plans, maps, specifications, and profiles on file in the office of the civil engineer of said city. The contractor will be required to enter into a contract to do said work, and to furnish all material, and to provide a bond for the faithful performance of said work; and to complete said work within sixty days from the approval of the contract and bond.

———————————, 18——, R. X. L.,
City Clerk.

[At the time the bid is let these plans, specifications, and profiles should be in the engineer's office open to inspection.]

Bid.

To the Common Council of the City of ———:

Gentlemen: The undersigned proposes to build the sewer in the center of Fourth street of said city, from the intersection of Fourth and Broadway streets south to the Wabash river [including any and all work and material that may be necessary to connect the work done with the adjoining work], in a workmanlike manner, and according to the plans, specifications, and profile on file in the office of the city civil engineer of said city, and according to the terms of ordinance No. 1, entitled "An ordinance for a sewer," adopted ———, 18—, and under the direction and to the entire satisfaction of the city civil engineer, for the sum of ——— dollars and ——— cents. Said work to be completed within sixty days from the date of the acceptance of this bid.

R. N.,
Contractor.

Resolution of Acceptance.

Resolved, That the bid of R. N. for the building of the sewer in Fourth street be and the same is hereby accepted; and the mayor is ordered to enter into a contract with him for said work, and to require a bond with proper security.

Contract and Bond.

[See forms, which can be modified, under § 3162.]

Engineer's Apportionment of Cost.

To the Common Council of the City of ———:

I hereby report the apportionment of the cost of the construction of the sewer in the center of Fourth street of said city running from the intersection of Broadway and Fourth streets south to the Wabash river, among the lots and tracts of land abutting and fronting upon said sewer, according to the provisions of ordinance No. 1, of said city, entitled "An ordinance for a sewer," adopted ———, 18—. The entire length of said sewer is ——— feet and ——— inches; and the entire cost ——— dollars and ——— cents.

The following persons are the owners of the several lots and tracts of land described, which abut upon said sewer, in the number of feet given; and the amount stated is the amount assessed upon each said lot or tract of land, viz.:

Name of Owner.	No. of Lot.	Addition.	Feet and Inches of Frontage.		Amount Assessed.
			Feet.	Inches.	
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total			.....	.....	.....

R. L.,
City Civil Engineer.

Notice to Lot Owners.

Notice is hereby given to the persons herein named that on the ——— day of ———, 18—, the common council of the city of ———, county of ———, and State of Indiana, adopted an ordinance for the building of a sewer from the intersection of Fourth and Broadway streets of said city, south to the Wabash river, in the center of said Fourth street, the cost thereof to be paid for by assessing the abutting lot owners according to the whole length of said sewer per running foot; that the following lots, within said city owned by the persons whose names are set opposite thereto, have been assessed in the sums given, to wit:

Owner's Name.	No. of Lot.	Addition.	Number of Feet and Inches of Frontage.		Amount of Assessment.	
			Feet.	Inches.	Dollars.	Cents.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
Total			.....	.....	.....	.....

Said persons will therefore take notice that at the regular meeting of the common council of said city held at 7 p. m. on ——— day of ———, 18—, at

the council chamber in the city hall, said assessment will come up for hearing and confirmation; and any and all of said persons will be then and there heard.

In testimony whereof I have hereunto set my hand and the seal of said city this ——— day of ———, 18—.

R. X. L.,
Clerk of the City of ———.

[City Seal.]

Marshal's Return.

Served the within notice upon the persons therein named by giving them a certified copy thereof, this ——— day of ——— 18—.

N. L.,
City Marshal.

[The above notice can be published.]

Clerk's Certificate.

State of Indiana, County of ———:

I hereby certify that the above and foregoing report was duly approved and adopted by the common council of the city of ———, on the ——— day of ———, 18—; that the lots and tracts of lands therein described were assessed by said council with the amounts set opposite each description therein named; and that the treasurer of said city was ordered to collect said amounts off of said lands as benefits and costs are collected by precept for street improvements.

In testimony whereof I have hereunto set my hand and the seal of said city of ———, this ——— day of ———, 18—.

R. X. L.,
Clerk of the City of ———.

[City Seal.]

[For procedure for collecting, see §§ 3165 and 3165*a*.]

Journal Entry.

Resolved by the common council of the city of ———, that the report of the city civil engineer, containing the apportionment of the costs for the construction of the sewer from the intersection of Broadway and Fourth streets, running south to the Wabash river, in the center of said Fourth street, made to this council on the ——— day of ———, 18—, due notice of the pendency of which before this council has been given ten days to residents of this city by written notice served by the city marshal and issued by the clerk, and for three consecutive weeks to non-residents by notice of the clerk of this city published in the *Argus-News* of this city, the first publication of which was on the ——— day of ———, 18—, and the last on the ——— day of ———, 18—, be and the same is hereby approved and ratified; and the several lots and tracts of land therein named and described are hereby assessed with the several amounts therein assessed to them, and said several amounts are hereby declared to be a lien on said several amounts as therein assessed; and the clerk of this city is ordered to issue to the treasurer thereof a certified copy of said report [as corrected by this council] with a certificate that the same has been fully approved and the lands therein described assessed with the amounts named, who shall collect the amounts thereof as benefits and costs thereof are collected upon precept for street improvement.

Sec. 3106. City prison. *Forty-fourth.* To erect a prison or prisons within the limits of such city. And it shall be lawful to imprison therein persons convicted of offenses against the laws of such incorporation or for offenses against the penal laws of this State, and also persons charged with offenses punishable by indict-

ment or presentment, temporarily, until they can conveniently be removed to the county jail. So far as the same may be applicable, the laws governing county jails shall be the laws of such city prison, and in all cases where the county jail is convenient, it may be used for city purposes until a city prison shall be erected.

1. See § 3075 and notes for powers of city marshal to confine in county jail, 7 Ind. 614. For use of workhouse, see § 6237.

2. This clause gives the city the exclusive right to determine the expediency of the purchase, the power to purchase or credit, and also to issue its negotiable bonds for the purchase money. Such purchase is not a loan within the prohibition of § 3159, 78 Ind. 192.

Sec. 3106. Purchase of real estate. *Forty-fifth.* To purchase, hold, or convey real estate for the purpose of constructing public buildings thereon, or using the same for a public park or other public purpose. And if designed for a public park, cemetery, water-works, or fair, such real estate may be purchased and held by such city, although lying without the limits of the corporation; and such city may, by ordinance, provide for the protection thereof, and for the manner in which and the persons by whom the same may be used and occupied; and any conveyance heretofore made of real estate by [to] any such city, for any of the purposes aforesaid, lying without the limits of such city, is hereby legalized and confirmed.

1. A *park* is liable for its part of street improvements, § 3163. Purchase of a city *infirmary* is authorized, § 3115.

2. Manner in which sale of real estate can be made, § 3106, clause 47, and §§ 3111 to 3113.

3. Property may be taken on side of an avenue for a park, 48 Barb. 9. The legislature may constitutionally authorize a city to hold land outside its limits, 99 N. Y. 569; but see 54 Mo. 458; nature of a city's ownership of a park situate outside of the city limits, 44 Mich. 602; 68 Mo. 175. If a street runs through a public park, the council can not order it fenced up, 3 Oreg. 126; nor may it fence up a railroad 63 Barb. 282; nor lay one out through it, 38 Mo. 363; nor a railroad, 53 N. Y. 574; 20 Hun. 201; 16 Pick. 87; S. P. 67 Ill. 540, without the assessment of damages.

4. The words "Spencer Square" on a town plat does not imply a dedication of the square for a park, 8 Ind. 378; nor "Garden Square," 24 Ia 283; nor a square marked "Coliseum," 16 La. 509; 7 La. Ann. 498; meaning of the word "park," 36 N. Y. 120; use, 45 N. Y. 234.

Sec. 3106. Shade-trees. *Forty-sixth.* To regulate the planting, maintaining, and protection of shade-trees along the streets and in public grounds; and compel the owners of lots bordering on any street, or part thereof, to plant, maintain, and protect such trees, and, on failure so to do, to cause the same to be done; and the expense thereof shall be a lien on such property and collected in the same manner as street improvements.

1. The city may enforce the planting of shade-trees, § 3229 and § 3229*a*. An ordinance imposing a penalty on any one mutilating a shade-tree in the street or a public park or place is not in conflict with the state law imposing a penalty on any one maliciously injuring the tree of another. Under such an ordinance it is not necessary to allege nor prove that the injury was malicious

or wanton, 37 Me. 329. Even the owner of the lot upon which the tree grows may be punished, if it is in the street or on the sidewalk, 37 Me. 329 (*contra*, 4 Lans. (N. Y.) 136). Shade-trees upon the edge of street are not obstructions, 46 Ia. 66.

2. In grading a street, shade-trees may be removed; and if destroyed, the lot-owner is not entitled to damages, unless they were killed through negligence or carelessness, 74 Ga. 164. The unlawful cutting down of shade-trees growing in the street will be enjoined, 19 N. J. Eq. 46; 18 N. J. Eq. 305, 313; § 3229*a*.

3. But as against an individual, the owner of a lot may recover in an action of trespass against any one destroying trees in the street adjacent to such lot, 99 Mass. 597; 97 Mass. 472.

Sec. 3106. Sale of public square or landing. *Forty-seventh.* The common council of any city may, upon the petition of a majority of the legal voters of such city, sell any public square or public landing of such city, or part thereof, and convey the same, by deed, under the hand of the mayor and seal of such city; and any moneys arising from any such sale shall be deposited in the treasury of such city, to be expended in the purchase of any other public square or public landing and for the improvement of the same.

Sections 3111 to 3113 possibly do not apply to public squares or landings. The action of the council in determining that a majority of the legal voters have signed the petition is conclusive, 15 Ind. 395. Without the petition a public square can not be sold; 16 Barb. 107.

Petition to Sell.

To the Common Council of the City of ———:

We, the undersigned, a majority of the legal voters of said city, ask your honorable body to sell the public square in said city, commonly known as "University Square," bounded by New York, Meridian, Vermont and Pennsylvania streets.

Sec. 3106. Reports of school trustees. *Forty-eighth.* To compel the city school trustee or trustees to make a report to the common council.

This is in addition to the report to the board of county commissioners, § 4441. The duty of reporting may be enforced by a resolution or by a permanent ordinance; and such resolution or ordinance may specify what subjects the report shall be upon.

Sec. 3106. Exemption of property. *Forty-ninth.* To exempt an amount of real property owned by any resident householder of such city, not exceeding three hundred dollars in value, from sale for street improvements.

Power of city to exempt, 2 S. C. 499; 33 Ia. 229. The city has no inherent power to grant exemption from taxation, 21 N. H. 393; 75 Mo. 208. This does not authorize the exemption of property from general taxation.

Sec. 3106. Contempts. *Fiftieth.* To punish contempts and contemptuous and disorderly demeanor in the council room.

A disorderly person may be removed from the council chamber on the order of the mayor when the council is sitting, 17 Wend. 522; or upon order of the council. The council possess only such power to punish for contempt as is conferred by this statute, 1 P. C. App. 329; 3 P. C. App. 560.

Sec. 3106. Drainage of real estate. *Fifty-first.* To provide on what terms real estate in such city may be drained by means of surface or under drains over and across other real estate therein.

This clause relates to the construction of drains by one land-owner over and across the lands of another, and not to the construction of public sewers, 47 Ind. 438.

[1857, p. 96. Approved March 7, 1857, and in force August 24, 1857.]

Sec. 3107. Market-houses. 1. It shall be unlawful for the common council of any city in the State of Indiana to erect upon any street of any city in said State any market-house, without having first obtained, in writing, the consent of two-thirds of all the owners of lots or parts of lots on such street, opposite to the place whereon such market-house is proposed to be constructed.

Sec. 3108. Market-houses. 2. It shall be unlawful for such common council to maintain any market-house which now is or may be erected upon any street of any city in this State, without the written consent of two-thirds of all owners of the lots or parts of lots opposite the place where the same is erected.

Sec. 3109. Market-houses—Nuisance. 3. Every market-house so erected or maintained without such consent of two-thirds of all the owners of the lots or parts of lots opposite to such market-house is hereby declared a nuisance; and it shall be the duty of the common council of the city where such market-house is so erected to abate and remove the same; and if such common council shall fail to remove it, it shall be lawful for any owner of a lot or part of lot opposite to such market-house, to abate and remove the same, and he may, by proper action, recover of and from such common council the amount of money expended by him in and about the abatement and removal of the same.

See § 3106, clauses 11, 29, and 33.

[1881 S., p. 103. Approved and in force April 6, 1881.]

Sec. 3110. Pipes for heating, etc. 1. The incorporated cities of this State are authorized, by ordinance or contract, to grant to any person or corporation the right to lay down pipes in their streets, lanes, alleys, thoroughfares, and public grounds, for the purpose of supplying the inhabitants thereof with steam, gas, or water for heating and motive power.

See act concerning *natural gas*, § 3229*h* (acts 1887, p. 36, El. Sup. § 800), and §§ 3110*a* and 3110*b*.

[1 R. S. 1852, p. 358. Approved May 20, 1852, and in force May 6, 1853.]

Sec. 3110*a*. Marine railways—Gas-pipes. 5. Corporations building steam-boats and other vessels shall have the right to construct marine railways, and all other necessary fixtures and machinery for repairing and launching the same; and gas-light companies may

lay pipes through the streets and alleys of any incorporated city or town, by repairing or making good any injury done thereto. [R. S. 1881, § 3856.]

See §§ 3110, 3110*b*, and 3229*h*.

[1883, p. 17. Approved and in force February 21, 1883.]

Sec. 3110*b*. Pipes and mains beyond city limits. 1. Any gas-light or water-works company in any city or town of this State shall be authorized and empowered to extend their pipes and mains beyond the corporate limits of such city or town, not to exceed a distance of five miles from the corporate limits of any such city or town, for the purpose of supplying persons or corporations with gas or water, and any such company shall be authorized and empowered to furnish and supply gas or water to any persons or corporations residing or located within five miles of the corporate limits of any such city or town. [El. Sup. § 1014.]

See § 3110, 3110*a*, and 3229*h*.

[1873, p. 62. Approved and in force March 7, 1873.]

Sec. 3111. Selling real estate. 1. Any city or cities incorporated under any general law of this State for the incorporation of cities, and owning real estate, shall have power to alienate, sell, and convey such real estate in whole or in parcels, as the common councils of such city or cities may deem expedient.

1. If the corporation holds the full title to property for public use, without restriction, the legislature may authorize its sale, 4 Pet. 232; 3 Lans. (N. Y.) 429; 45 N. Y. 234. But if title has been acquired for specific and limited purposes, the legislature can not authorize its sale as against the objection of the person who owns the reversion, 18 O. S. 221; 22 Ia. 351; or other vested private interest therein, 9 Kas. 453. A city clerk duly authorized by council to convey property under seal of the corporation, can not convey the title of the corporation under his official seal, 43 O. S. 178. City which has no board of improvements can authorize sale of property without the recommendation provided for in the section, 26 O. S. 619. Property owned and held for municipal purposes can not be sold on execution, even when not in actual use, 4 Bull. 77.

Sec. 3112. Vote necessary—Deed. 2. Such alienation, sale, and conveyance shall be made by the common council of such city or cities by a vote of two-thirds of all the members of such common council. When any alienation and sale shall be made by such common council, they shall order and direct the mayor of such city to execute and deliver a deed of conveyance to the purchaser, which shall be in the usual form, and shall be executed in the name of such city and signed by the mayor in his official capacity, and sealed with the seal of the city; and, when thus executed, acknowledged, and delivered, shall convey all the right, title, and interest of the city in and to the premises so conveyed.

Sec. 3113. Appraisement. 3. No such property shall be sold until the same has been appraised by three disinterested freeholders of such city, to be appointed by the judge of the circuit court of

the county in which such city may be situated, neither of whom shall be members of the city council or officers or employes of such city. Said appraisers shall be first sworn to make a just and true valuation of such property, and shall return their appraisement, in writing, to the mayor or common council of such city; and no such property shall be sold for less than the full appraised value thereof.

Sales under these sections were legalized in 1885, acts 1885, p. 108; El. Suppl. 688. See § 3106, clauses 45 and 47, and *notes*. The council should request the judge of the circuit court to make the appointment; the appraisement should be returned, and then the land ordered sold and a deed executed.

Request for the Appointment of Appraisers.

Resolved by this common council that the judge of the ——— circuit court is hereby requested to appoint three disinterested freeholders of this city for the appraisement of the following described real estate, owned by this city, situate in the county of ———, and State of Indiana, viz.: Lot 13 of Gibson's addition to the city of ———, with the view of selling the same.

[Certified copy should be laid by the clerk before the judge.]

Order of Appointment.

In pursuance of the request of the common council of the city of ———, of the State of Indiana, adopted on the ——— day of ———, 18—, I hereby appoint A. B., C. D., and E. F. to appraise lot No. 13 of Gibson's addition to said city, and make return thereof to the mayor or common council thereof.

G. H.,
Judge of the ——— Circuit Court.

[This appointment need not be spread of record in the circuit court, it being only the act of the judge.]

Oath of Appraisers and Appraisement.

State of Indiana, County of ———, *ss:*

We, A. B., C. D., and E. F., do solemnly swear that we will make a just and true valuation of lot No. 13 of Gibson's addition to the city of ———, county of ———, and State of Indiana. So help us God.

A. B.,
C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.

H. I.,
Notary Public.

[Notarial Seal.]

We, the undersigned, appraisers appointed by the judge of the ——— circuit court to appraise lot No. 13 of Gibson's addition to the city of ———, county of ———, and State of Indiana, do hereby appraise and fix the true value thereof at ——— dollars.

A. B.,
C. D.,
E. F.

Order of Sale.

Resolved that this city of ——— sell and convey by warranty deed lot No. 13 of Gibson's addition to said city, county of ———, and State of Indiana, to L. X., for the sum of ——— dollars; and the mayor is hereby ordered, directed and authorized to execute and deliver to said L. X., upon the payment of said sum of money, a sufficient deed therefor; and this shall be a sufficient authority to him in said premises.

Deed.

This indenture witnesseth: That the city of ———, in the county of ———, and State of Indiana, in pursuance of a resolution of the common council of said city adopted on the ——— day of ———, 18—, and entered in journal record number ———, on page ———, conveys and warrants to ———, of the county of ———, and State of ———, for the sum of ——— dollars, the following described real estate situate in the county of ———, and State of Indiana, viz.: [*Describe it.*]

In witness whereof I have hereunto set my name as mayor of said city, and affixed the seal thereof, this ——— day of ———, 18—.

[City Seal.]

A. B.,
Mayor of the City of ———.

State of Indiana, County of ———, *ss:*

Personally appeared before me, A. B., mayor of the city of ———, of the State of Indiana, and acknowledged the execution of the above and foregoing deed, executed in behalf of said city.

In testimony whereof I have hereunto set my hand, and official seal, this ——— day of ———, 18—.

[Seal.]

C. D.,
Notary Public.

[1873, p. 63. Approved and in force March 7, 1873.]

Sec. 3114. Water-works. 1. The common council of any city engaged in establishing and constructing water-works for furnishing such city with wholesome water, may, by a vote of two-thirds of the members of such council, at any regular or adjourned meeting thereof, issue the bonds of such city, payable at such times as the common council may direct, and bearing interest at any rate not exceeding ten per cent., and may negotiate the same upon the best terms they can obtain, not less than ninety-seven cents on the dollar; and the proceeds of such bonds shall be applied only to the construction of said water-works.

See § 3106, clause 26, *notes;* and § 3265, concerning water-works companies. If the treasurer squanders the money received, this does not prevent a new issue of bonds for the same purpose for which the old bonds were issued, if the constitutional limitation is not exceeded, 49 Ind. 169.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3115. Infirmary for poor. 55. The city council shall have power to erect, establish, maintain, and regulate an infirmary for the accommodation of the poor of said city, either within the limits of such city or within the county in which it may be situated; and, for such purpose, may purchase and hold any real estate that may be deemed necessary. The management and government of any such infirmary, and the quantity of out-door relief to the poor, under such rules and regulations as the council may prescribe, may be vested in a board of three directors, to be elected by the city council, who shall hold their office for the term of three years; but it shall be so provided that one of said directors shall be elected annually. The city council may elect, or the said directors shall appoint, an overseer in each ward, who shall per-

form such duties in respect to the care of the poor and their removal to said infirmary, as the council may prescribe.

City hospital, see § 3106, clause 33. That a city may receive a gift for the benefit of its poor, see 2 Dillon, Municipal Corporations, §§ 566 to 572, and 1 Rawle (Pa.) 170; 102 Ind. p. 377.

[1885, p. 94. Approved and in force March 17, 1885.]

Sec. 3115*a*. City may purchase real estate for sanitary purposes. 1. It shall be lawful for incorporated cities in this State to purchase and hold real estate without the limits thereof for sanitary purposes; and any conveyance heretofore made of real estate to any such city for any such purpose, within or without the limits of any such city, together with any and all bonds and obligations issued in payment therefor, or to raise revenue with which to pay therefor, are hereby legalized. [El. Sup. § 686.]

[1873, p. 64. Approved and in force March 10, 1873.]

Sec. 3116. Large cities may borrow money. 1. Any incorporated city of this State containing a population of fifteen thousand or over, may borrow money to an amount not exceeding two per cent. of the taxable property of such city, as the same shall appear upon the tax duplicates of such city for the year in which such loan may be effected: *And provided,* That the entire money borrowed shall not, at any time, exceed two per cent. of the taxable property of such city.

Touching the constitutional limitation, see § 220, *notes*. Temporary loans for school purposes by cities having 3,000 inhabitants, § 4464.

Sec. 3117. Purpose of loan. 2. Such loans shall be made only for the purpose of procuring money to be used in the legitimate exercise of the corporate powers of such city, as the same are prescribed and defined in laws providing for the incorporation and government of cities: *And provided,* That nothing in this act contained shall be in anywise construed as authorizing any city to contract any debt or liability for any other than a legitimate corporate purpose; but such loans may be made to procure money to pay debts already contracted in the due exercise of corporate powers conferred by the laws of the State.

Sec. 3118. Ordinance for loan. 3. The city assessor, city clerk, and city treasurer shall, before any such bonds are ordered to be issued, join in an affidavit, stating therein the total value of the taxable property of such city, as shown by the tax duplicate, and also the fair valuation thereof; which affidavit shall be reported by the city clerk to the common council of such city. The common council shall, thereupon, cause an ordinance to be introduced, providing for such loan; and the said ordinance shall be, thereupon referred to such committee as the common council may deem proper; and said committee of such council shall, at the next regular meeting

of such common council, report such ordinance to the common council, with such recommendations as they may deem expedient. If the common council determine, by a two-thirds vote of all the members thereof, to make such loan (which determination shall be evidenced by the passage of such ordinance), the mayor of such city shall order and direct the requisite number of blank bonds to be prepared; and these he shall sign and deliver to the city clerk, taking his receipt therefor; and the city clerk shall countersign the same, and attach the corporate seal thereto, and deliver them to the city treasurer, and shall take from such treasurer a receipt for such bonds; and in such receipt shall be particularly described the said bonds as to date, number, amount, and time of payment. The bonds so received by such treasurer shall be, by him, safely kept; and, at the next meeting of the common council, he shall report the receipt thereof to that body. Upon the report of such treasurer, the common council may authorize a committee thereof to negotiate a sale of said bonds, of which committee the treasurer shall be a member, and all moneys received from the sale of such bonds shall be, by such treasurer, received and kept, to be paid out under the order and direction of the common council as money derived from other sources is directed by law to be paid out. And such treasurer shall, in a proper book, register said bonds, note the day of sale thereof, the moneys realized therefrom, and, at all times, keep a plain, correct, and fair account of such transaction, so that the same may be readily understood; and shall at all times keep the same open and accessible to the public. It shall be the duty of the treasurer, within one week after the negotiation of such bonds, to report the same to the common council, stating all the particulars of such transaction; which report the said treasurer shall duly verify by oath or affirmation. The said treasurer shall faithfully pay over and account for all moneys by him received from the sale of such bonds.

Sec. 3119. Interest—Sale of bonds. 4. The common council may provide the rate of interest, not exceeding ten per cent. per annum, which said bond shall bear, and may prescribe the time and manner in which said bonds and interest may be payable: *Provided*, That no bonds shall be issued payable at a period of more than twenty years: *And provided*, That at no time shall there be outstanding of such bonds an amount in excess of two per cent. of the taxable property of such city. The common council shall have power to dispose of said bonds as hereinbefore provided; but the same shall in no case be sold at less than par. The committee of the common council appointed to sell said bonds, as hereinbefore provided, shall, upon the sale thereof, report to the common council the date of sale, the amount sold for, and the disposition of the proceeds of such sale or sales. The committee shall cause a publication to be made, for such time as they may deem proper, in a newspaper of general circulation, inviting proposals for such

bonds, and shall sell the same to the highest and best bidder, provided the same shall not be sold at a less rate than that hereinbefore prescribed.

1. Where the fund realized by the sale of bonds was squandered by the treasurer, it was held that other bonds could be issued to supply the deficiency, 49 Ind. 169. Unless authorized to issue bonds, a city can not do so, 5 Ind. 38; but if authorized to borrow money, it may sell bonds for that purpose, 29 Ind. 305; see 9 Ind. 74.

2. *Power to issue bonds.* Under the classification of municipal corporations, a law which confers the power to issue bonds upon a municipality by name, or such other designation, that it does not and can not apply to any other corporation, is a special act conferring corporate power, and is, therefore, unconstitutional, 31 O. S. 592; 44 O. S. 247; 13 Bull. 614; 8 Neb. 178; 103 U. S. 707; 2 Dillon, 353. The issue of bonds under such an act may be enjoined at the suit of a tax-payer, 13 Bull. 614; the levy of a tax to pay the interest on such bonds may be enjoined at the suit of a tax-payer, 92 Ill. 24; and the bonds are void in the hands of an innocent purchaser for value before maturity, 44 Ia. 88; 55 Miss. 115.

3. *Formalities of issue.* Form of bond is not material, unless the form is prescribed by law, in which case that form should be used, 101 U. S. 693. If they can only be issued after certain majority has voted therefor, the majority is determined by those voting on that question, 16 Wall. 644; 95 U. S. 360; 111 U. S. 556; 37 Mo. 270. Of a board of three, two may lawfully issue bonds, 24 How. 435. Signatures to coupons need not be written, 48 Cal. 565; 3 Dill. 210; 99 U. S. 118. Omission of seal will not invalidate bonds in hands of *bona fide* holder, 96 U. S. 312; 109 U. S. 341; 104 U. S. 504. They may be made payable beyond the limits of the State, unless statute prohibits, 16 Wall. 6.

4. *Rights of bona fide holders.* If the act conferring power to issue bonds is in conflict with the constitution, the bonds are void, even in the hands of a *bona fide* holder for value, 92 U. S. 569, 625; 106 U. S. 487; 114 U. S. 120; 22 How. 364; 61 Ill. 99; 92 Ill. 24; 55 Miss. 115; 44 Ia. 88. But if power is conferred, a defective execution of the power will not avail to avoid the bonds in the hands of an innocent holder, 27 O. S. 96; 37 O. S. 526; 16 Wall. 644; 97 U. S. 96. And if the municipality could have had power under any circumstances to issue the bonds, the *bona fide* holder has the right to presume that they were issued under the circumstances which gave the authority, 96 U. S. 312; 5 Wall. 772; 22 Ind. 88; 52 Ind. 563; 123 Ind. 41. If the bonds recite on their face that they are issued in pursuance of an act of the law-making power, the corporation can not show that the necessary steps have not been taken, 27 O. S. 96; 110 U. S. 608; 106 U. S. 183. Or, if a condition precedent to their issue is annexed by the law conferring the power, and they recite a compliance, the corporation will not be allowed to show a want of compliance as against an innocent holder (*petition of freeholders*), 37 O. S. 526; 2 Black, 722; (*popular vote*), 21 How. 539; (*election upon notice*), 92 U. S. 642; (*assent of tax-payers*), 92 U. S. 494; (*limit to amount of issue*), 92 U. S. 637. See also 32 How. 364; 10 Wall. 676; 14 O. S. 260. But in the absence of such recital, the facts may be shown, 111 U. S. 556. Municipality may also be estopped to deny regularity of issue by its own acts, as receiving stocks for its bonds, which it holds and from which it accepts benefits for several years, 94 U. S. 202; or where it fails to enjoin the issue and pays interest thereon for ten years, 113 U. S. 227. But recitals and acts operating by way of estoppel cure irregularities only; they can not create power, 114 U. S. 120. Corporations may plead the statute of limitations in actions against them on their bonds, 4 Tex. 470. Coupons are negotiable, and holder may sue thereon in his own name, without producing or being interested in the bonds to which they were originally attached, 3 Wall. 327; 2 Wall. 110; 24 Ill. 75. Satute of limitations begins to run on coupons from date of their maturity, whether attached to, 98 U. S. 470, or detached from bond, 20 Wall. 583. Stolen bonds or coupons are good in the hands of an innocent purchaser for value before maturity, 66 N. Y. 14; 15 Cal. 336; 102 Mass. 503; and this, although the number is changed by the thief, 29 N. J. Eq. 587; 29 N. Y. 220; or the name of payee is inserted in blank left for that purpose, 38 N. J. L. 146; 1 Hun. 675. But

where any essential part of bond is incomplete when stolen, and is filled in by the thief, or person holding under the thief, no recovery can be had (*place of payment*), 53 N. Y. 307; 2 Woods, 141; (*seal and endorsement*), 11 Hun. 8. Coupons are entitled to days of grace, and stolen coupons purchased within the three days are purchased before maturity, 66 N. Y. 14. Pendency of suit to enjoin the issue and delivery of bonds will not affect the title of a *bona fide* purchaser, not a party to the suit, 97 U. S. 96; 111 U. S. 556.

5. Coupons may have *fac-simile* of name of officer stamped thereon, in place of written signature, 48 Cal. 565; 3 Dill. 210. Bonds sold at less than par value are void in the hands of the purchaser from the city, but not in the hands of one buying from such purchaser without knowledge that they had been sold at less than par, 27 O. S. 96.

6. If made payable to bearer they are negotiable as inland bills of exchange, and are only payable after they are due, upon presentation at the office of city treasurer, or at the place where they are made payable. They are governed by the law merchant. If the *bonds* are *lost* before maturity, it may be so averred, and a recovery had, if the plaintiff offers and tenders in court an approved bond, 123 Ind. 41; 101 Mass. 370.

7. Omission of seal will not invalidate a bond in the hands of an innocent holder for value, 96 U. S. 312; 104 U. S. 501; 100 U. S. 341.

Council's Request for an Affidavit.

The city clerk, and city treasurer is hereby requested to prepare and lay before this council an affidavit showing the total value of the taxable property of this city, as shown by the tax duplicate and also the fair valuation thereof.

Affidavit.

State of Indiana, County of ——— ss:

We, C. D., clerk, and E. F., treasurer, of the city of ———, in said county and State, in pursuance of the request of the common council of said city, upon our oaths state that the total value of the taxable property of said city, as shown by the tax duplicate thereof, is ——— dollars; and that a fair valuation of such property is ——— dollars.

C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.

H. L.,
Notary Public.

[Notarial Seal.]

[Since there is now no city assessor, the affidavit of the clerk and treasurer is sufficient.]

Journal Entry.

Comes now C. D., city clerk, and E. F., city treasurer, and files an affidavit showing that the total value of the taxable property of this city, as shown by the tax duplicate thereof, is ——— dollars, and that the fair valuation of said property is ——— dollars; and thereupon an ordinance for procuring a loan and issuing ——— dollars of bonds is presented by the city attorney and introduced by order of the council and by it referred to the committee on finance.

Ordinance.

ORDINANCE AUTHORIZING THE BORROWING OF ——— DOLLARS, AND SALE OF BONDS THEREFOR.

SEC. 1. Be it ordained by the common council of the city of ———, that said city borrow the sum of ——— dollars.

SEC. 2. That in order to procure said loan the bonds of said city be issued to the amount of ——— dollars, in denomination of ——— dollars each, bearing —— interest, payable annually, evidenced by a coupon for each year's interest, signed by the mayor and countersigned by the clerk of said city, and sealed with the seal of said city, one-fourth of which shall become due in —— years, one-fourth in —— years, one-fourth in —— years, and the remainder in ——— years.

SEC. 3. This ordinance shall be in force from and after its passage.

Report of Finance Committee.

We, the undersigned, the committee on finance, to whom was referred by the common council an ordinance for procuring a loan of ——— dollars, and for the issuing of bonds to secure the same, respectfully report back said ordinance with the recommendation that it be adopted by the council.

X. Y.,
L. Q.,
R. S.

Journal Entry.

Upon the call for reports of committees, the committee on finance report to the council as follows, viz.: [*Set out the report above*], and thereupon, on the motion of L. U., the following ordinance was adopted by a two-thirds vote of all the members of the council viz.: [*Set out the ordinance in full*, or words *may be used fully identifying it, and thus dispensing with setting it out.*] Those voting in favor of the adoption of said ordinance were [*set out the names and number*]; those against its adoption were [*set out the names and number*], whereupon it was declared by the mayor that said ordinance was adopted.

Form of Municipal Bond.

No. ———. $———.

City of ———.

The city of ———, of the State of Indiana, hereby acknowledges itself indebted to and promises to pay ——— or bearer, the sum of ——— dollars, on the ——— day of ———, 18—, with interest thereon at the rate of ——— per cent. per annum, payable annually, on the ——— days of ——— of each year and the presentation and surrender of the annexed coupons, as they severally become due. [Provided, that the privilege is hereby reserved to said city of ——— to redeem this bond at any time after the ——— day of ———, 18—, and if so redeemed interest shall cease thereon after the date of redemption.] Both principal and interest are payable at ———. This bond is issued, and all proceedings relating thereto have been had in strict compliance with an act of the general assembly of the State of Indiana, passed on the 10th day of March, 1873, entitled "An act authorizing incorporated cities containing a population of fifteen thousand to make loans, and prescribing rules and regulations concerning the borrowing of money by such cities," and an ordinance of said city of ———, entitled "An ordinance authorizing the borrowing of ——— dollars and sale of bonds therefor," adopted on the ——— day of ———, 18—.

In witness whereof the mayor of said city has hereunto signed this bond as mayor of said city; and the clerk of said city has hereunto countersigned the same as clerk of said city, and attached thereto the corporate seal thereof, this ———day of ———, 18—.

N. O.,
Clerk of the City of ———. [Corporate Seal.] A. M.,
Mayor of the City of ———.

Coupon.

$———. No. ———.

On the ——— day of ———, 18—, the city of ——— promises to pay to ——— or bearer, ——— dollars, being one year's interest due that day on bond No. —— for $———, dated on the ——— day of ———, 18—.

N. O.,
Clerk of the City of ———.

Clerk's Receipt.

Received of A. M., mayor of the city of ———, ——— bonds with coupons attached, each bearing date on the ——— day of ———, 18—, each calling for ——— dollars, with ——— per cent. interest, payable annually, numbered consecutively from 1 to ——, one-fourth part thereof due on the ——— day of ———, 18—, one-fourth on the ——— day of ———, 18—, one-fourth on the ——— day of ———, 18—, and the remainder on the ——— day of ———, 18—.

Dated ———, 18—, at the city of ———, Ind.

N. O.,
Clerk of the City of ———.

Treasurer's Receipt.

[The above form may be used.]

Treasurer's Report.

To the Common Council of the City of ———:

I hereby report to your honorable body that I have received from the city clerk ——— bonds with interest coupons attached, each bearing date on the ——— day of ———, 18—, each calling for ——— dollars, with ——— interest, payable annually, numbered consecutively from 1 to ——, one-fourth due ———, 18—, one-fourth ———, 18—, one-fourth ———, 18—, and the remainder ———, 18—, all signed by the mayor and countersigned by the city clerk.

L. U.,
City Treasurer.

Registry of Bond.

Date of Bond.	No.	When Due.	Amount.	Rate of Interest.	Date of Sale.	To Whom Sold.	Amount realized by Sale.

Appointment of Committee.

Resolved, That A. B. and C. D., councilmen, and L. U., city treasurer, be and are hereby appointed a committee of three to negotiate and sell the bonds of the city, now in the hands of said treasurer, and referred to by him in his report of ———, 18—.

Report of Committee.

To the Common Council of the City of———:

We, the undersigned, appointed as a committee to sell the bonds of said city, issued ———, 18—, hereby report that on the ——— day of ———, 18—, we sold ——— of said bonds, from No. —— to ——, for the sum of ——— dollars, and paid over said sum to the city treasurer.

A. B.,
C. D.,
L. U.

Notice of Sale of Bonds.

Office of Clerk of the City of ———, ———, 18—.

Sealed proposals will be received at this office until ——day, the ——— day of ———, 18—, at twelve o'clock m., for the purchase of ——— bonds of

the city of ———, bearing date the ——— day of ———, 18—, and payable in ——— years from date, each being for the sum of ——— dollars, and bearing interest at the rate of ——— per centum per annum, payable annually. Said bonds are issued for the purpose ——— ———, in pursuance of an act of the general assembly of the State of Indiana, entitled "An act authorizing incorporated cities containing a population of fifteen thousand to make loans, and prescribing rules and regulations concerning the borrowing of money by such cities," approved March 10, 1873, and of an ordinance entitled "An ordinance authorizing the borrowing of ——— dollars and sale of bonds therefor," passed the ——— day of ———, 18—, authorizing their issue.

Said bonds will be sold to the highest bidder for not less than their par value.

Bidders are required to state the number of bonds bid for, and the gross amount they will pay for the bonds bid for, and accrued interest to date of transfer.

The right to reject any and all bids is reserved.

Proposals must be sealed and indorsed "Bids for ——— Bonds."

_____

City Clerk.

[The sale may be made without bids.]

Treasurer's Report.

To the Common Council of the City of ———:

I hereby report that the committee appointed by this council on the ——— day of ———, 18—, to negotiate the sale of the bonds of said city, issued ———, 18—, on the ——— day of ———, 18—, sold numbers ——— of said bonds to ———, for the sum of ——— dollars each, making a total of ——— dollars, after ——— days' notice published in the *Daily Argus* of this city, and on the same day paid the proceeds thereof into my hands. The sum received was the highest offer made for the bonds.

L. U.,
City Treasurer.

[1877, p. 14. Approved and in force February 13, 1877.]

SEC. 3120. Large cities—Funding-bonds. 1. Where the aggregate indebtedness of any city in this State having a voting population of over sixteen thousand, as shown by the votes cast for governor at the last preceding election, amounts to or exceeds, at the date of the passage of this act, two per cent. upon the total of the taxables upon the city tax duplicate for the current year, it shall be lawful for the common council of any such city, on or after May 1, 1877, to fund so much of said indebtedness as may be outstanding on said first of May, 1877 (whether such indebtedness be then due or is thereafter to become due), in the bonds of such city, drawing not exceeding six per cent. per annum interest, payable, semi-annually, at such place and time as the common council of said city may, by ordinance, provide; which bonds such common council is hereby authorized to issue: *Provided, however*, That such funding-bonds shall be used only in taking up and canceling warrants and bonds of such city, previously issued to creditors, or sold and delivered, as may be outstanding on said first day of May, 1877. And to that end, it shall be the duty of the common council to cause a full and complete statement to be made of the said bonds

and warrants outstanding at that date; which statement shall be signed by the mayor, treasurer, and clerk, and be spread on the record of the proceedings of the council, and published in one or more newspapers in such city; and the aggregate of the funding-bonds issued shall not exceed the amount of such indebtedness outstanding on said first day of May, 1877. And whosoever shall issue, or aid or abet in issuing, bonds exceeding in amount the amount herein authorized, or shall apply, aid, or abet in applying the same to any other purpose than the purposes herein authorized, shall be deemed guilty of a felony, and shall be punished by imprisonment in the state prison not less than one nor exceeding ten years, and be fined in any sum less than ten thousand dollars; and if he be an officer of such city, suit may also be brought upon his official bond for the amount issued or misapplied contrary to this act.

Sec. 3121. Limit of debt. 2. When the aggregate indebtedness, funded or otherwise, of any city of this State having a voting population of over sixteen thousand, as shown by the votes cast for governor at the last preceding election, amounts to or exceeds two per cent. upon the taxables borne upon the city tax duplicate for the current year, it shall not be lawful to increase such indebtedness in any manner or form whatever, except only by temporary loans in anticipation of the revenue of the then current year, and not exceeding two-thirds of the amount of the city tax duplicate for the preceding year, payable out of said revenue and within the current year; and no temporary or other loan upon the revenue of any year thereafter shall be made until all temporary loans upon the revenue of any preceding year have been fully paid; and any ordinance or resolution, warrant, certificate, obligation, note, contract, or other evidence of indebtedness, by whomsoever made, or in whatsoever form, to increase the indebtedness of any such city, except as herein provided, shall be absolutely null and void.

Constitutional limitation, § 220, *notes*.

Sec. 3122. Limit of tax-levy. 3. It shall not be lawful for the common council of any city in this State having a voting population of over sixteen thousand, as shown by the votes cast for governor at the last preceding election, to levy and assess a tax, for any one year, exceeding, in the aggregate, ninety cents upon the hundred dollars returned for taxation upon the city tax duplicate for the current year; and it shall not be lawful for the board of school commissioners of any such city to levy or assess taxes for any one year exceeding, in the aggregate, twenty cents on the hundred dollars of property returned upon the city tax duplicate for the current year: *Provided, however*, In addition to the sum of twenty cents aforesaid, said board of school commissioners may levy a tax, each year, for the support of free libraries, as now pro-

vided by sub-section three of section four [§ 4460] of an act providing for a general system of common schools in all cities of thirty thousand or more inhabitants, and for the election of a board of school commissioners of such cities, and defining their duties and prescribing their powers, and providing for common school libraries within such cities, approved March 3, 1871. And so much of any law as requires the levy of a tax by the common council for a sinking fund is hereby repealed as to such city; and any money in the city treasury of such city, on account of such sinking fund, may be appropriated by the city council for general city purposes.

Sec. 3123. Orders forbidden. 4. No warrant or order for money shall be drawn upon the treasurer of any such city after May 1, 1877, if at the time there be no money in the treasury; and, to that end, it shall be the duty of the city treasurer to keep the clerk, auditor, or other officer authorized to draw orders or warrants, informed when there is no money in the treasury; and, failing to do so, he shall be liable, on his official bond, for the amount of orders or warrants drawn during such failure, with interest thereon, to the person in whose favor such order or warrant was drawn. If the clerk, auditor, or other person authorized to draw orders or warrants upon the treasurer, shall draw any order or warrant upon the treasurer, knowing there is no money in the treasury, he shall be liable, on his official bond, for the amount, with interest thereon, to the person to whom such order or warrant was made payable.

Sec. 3124. Appropriations forbidden. 5. It shall not be lawful for the common council of any such city, after May 1, 1877, to make any appropriation of money, unless, at the time of making such appropriation, the money be in the treasury with which to pay the same.

[1877, p. 17. Approved and in force March 3, 1877.]

Sec. 3125. Funding by small cities. 1. Any city of said State having an indebtedness of not less than thirty thousand dollars, evidenced by bonds, notes, or city orders, or any or either of them, may, for the purpose of funding its indebtedness, reducing the rate of interest on its pre-existing obligations, compromising with any creditor or creditors, or taking up and cancelling its bonds, notes, or other securities already due, or which shall hereafter become due, upon the vote of two-thirds of the members of its common council, issue its bonds, with or without coupons, not exceeding in the aggregate the whole amount of the indebtedness of such city; which bonds may be of any denomination, and payable at any time and place, and bear any rate of interest not exceeding ten per cent. per annum, payable semi-annually. And said city may negotiate said bonds at any market or place, at any rate of discount not exceeding ten per cent.; and after such bonds shall have been nego-

tiated, no action or proceeding shall be instituted, nor any defense to any action interposed, by said city, or by any person or persons, the object of which shall be to impair the validity or security or depress the value of said bonds.

Sec. 3126. Tax—Sinking fund. 2. The common council of said city shall, annually, add to the tax duplicate a levy sufficient to pay the yearly interest on said bonds, with an addition of not less than five cents on the one hundred dollars, to create a sinking fund to provide for the liquidation of the principal thereof; which fund, with all the increase thereof, shall be applied to the payment of said bonds, and to no other purpose: *Provided*, That the provisions of this act shall not apply to any city having a voting population of sixteen thousand or over, as shown by the votes cast for governor at the last preceding election.

1. An act of 1865 (S., p. 146), which took effect December 2, 1865, authorized cities which shall have commenced the erection of any school-building to issue bonds not exceeding thirty thousand dollars, and payable in twenty years, in order to pay for such building, and to levy a special school tax to liquidate such bonds.

2. In 1879 an act was passed concerning the funding of the debt in any city of less than 16,000 inhabitants, acts 1879, p. 87. This act was amended in 1881, (acts 1881, p. 12,) R. S. 1881, §§ 3230, 3231. Possibly this act repealed the above two sections. But these acts of 1879 and 1881 were repealed by an act of 1887, on the same subject, § 3230. In 1889 an act was passed providing for funding the debt of any city having a population of 10,000 and an indebtedness of $100,000, § 3126*a*.

3. See § 3158; investment of sinking fund, § 3158*a*.

4. See § 3119, *notes* 1 to 5.

[1889, p. 32. Approved and in force February 29, 1889.]

Sec. 3126*a*. Sinking fund commissioners. 1. In all cases where any city organized and incorporated under the general laws of the State of Indiana, and having a population of ten thousand or more inhabitants shall be indebted to the amount of one hundred thousand dollars, or more, evidenced by the bonds of such city, there may be appointed, in the manner hereinafter provided, two commissioners who shall be known and designated as the "sinking fund commissioners." [El. Sup. § 696.]

Sec. 3126*b*. Election—Oath—Bond. 2. Such commissioners shall be of opposite politics, and shall be selected from the two political parties casting the greatest number of votes at the last preceding general election for state and county officers. They shall be elected by the common council of said city, and before entering upon the discharge of the duties of their office, they shall severally execute bond to the State of Indiana in a penalty of double the amount of the outstanding bonds of the city for which they shall be appointed, with sureties to the satisfaction of the judge of the circuit court of the county in which such city is situated. They shall take an oath to faithfully and honestly discharge the duties of their trust, and to faithfully and honestly ac-

count for and pay over to the person or persons, officer or officers, entitled thereto all moneys which may come to their hands as such commissioners, and their oath shall be endorsed on the certificate of their appointment. Such bond and oath shall be filed in the office of the county clerk, and such bond shall be recorded in the order book of said court. Such commissioners shall hold their office for the term of five years, unless sooner removed by the order of the court having jurisdiction in that behalf. [El. Sup. § 697.]

1. So far as this section requires the commissioners to be selected from the two political parties casting the greatest number of votes, it is void, 118 Ind. 426; 58 Mich. 213, S. C. 55 Am. R. 675. See 148 Mass. 375.

2. The constitution provides that the term of an office shall not exceed four years, R. S. 1881, § 224. So far as this act attempts to make the terms of office five years it is void. Whether or not these two defects render the whole act void, only the supreme court can determine.

Election of Commissioners.

Resolved by the common council of the city of ——— that A. B. and C. D. be and are hereby elected "sinking fund commissioners" for and during the ensuing term of said offices, the term of such offices to begin from this date.

Election Certificate.

I, X. Y., clerk of the city of ———, State of Indiana, hereby certify that at a regular meeting of the common council of said city, held in the council chamber thereof, on the ——— day of ———, 18—, A. B. was duly elected by the said council sinking fund commissioner of said city, his term of office to begin from the date of his election.

In testimony whereof I have hereunto set my hand and affixed the seal of said city this ——— day of ———, 18—.

X. Y.,
Clerk of City of ———.

[Seal.]

Oath.

State of Indiana, County of ———, *ss:*

I, A. B., do solemnly swear that I will faithfully and honestly discharge the duties of sinking fund commissioner of the city of ———, State of Indiana, and will faithfully and honestly account for and pay over to the person or persons, officer or officers, entitled thereto, all moneys which may come to my hands as such commissioner. So help me God.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

L. U.,
Notary Public.

[Seal.]

Bond.

Know all men by these presents that A. B., as principal, and U. T. and R. S., as sureties, are firmly bound unto the city of ———, State of Indiana, in the penal sum of ——— dollars. Witness our hands and seals this ——— day of ———, 18—.

The condition of the above bond is, that whereas said A. B. was elected a sinking fund commissioner of said city, by its common council, on the ——— day of ———, 18—, for a term of office beginning from the date of his election; now if the said A. B. shall faithfully and honestly discharge the duties of his

said trust, and faithfully and honestly account for and pay over to the person or persons, officer or officers, entitled thereto, all moneys which may come to his hands as such commissioner, then this bond shall be void; else in full force and effect.

A. B., [Seal.]
U. T., [Seal.]
R. S. [Seal.]

Approved by me this ——— day of ——— 18—.

R. T.,
Judge of the ——— Circuit Court.

Sec. 3126c. Duty of treasurer—Deposit of funds. 3. It shall be the duty of the city treasurer, at the end of each calendar month, to furnish to the said commissioners a statement in writing, verified by his affidavit, showing the whole amount of taxes collected by him during the preceding month, and the proportion thereof collected on account of the sinking fund for the redemption and payment of all the outstanding bonds of the city, and also the amount collected by him on account of the fund for the payment of the interest on such bonds, and the treasurer shall, at the time of rendering such statement, pay over to the commissioners the full amounts so collected by him on account of each of said funds. The said funds and moneys so received by the said commissioners shall, on the day they are received by such commissioners, be deposited by them in two or more national banks in the city owning the bonds, such deposits to be made in the joint names of such commissioners in their official character and not otherwise, and no check or draft shall be paid by such banks out of said funds unless signed by each and both of said commissioners. If any interest or other compensation shall be allowed or paid directly or indirectly by any bank or banks for or on account of such deposit such interest or compensation shall constitute a part of such trust funds, and in no event shall such commissioners receive or derive any profit or advantage from such fund or deposits. [El. Sup. § 698.]

Report to Commissioners.

To the Sinking Fund Commissioners of the City of ———:

I herewith submit my report for the month ending ———, 18—.
Amount of taxes collected, ... $———
Amount of taxes collected for redemption and payment of bonds, ... $———
Amount of taxes collected for payment of interest on bonds, . $———
Total collected, ... $———

X. U.,
Treasurer of the City of ———.

I, X. U., upon my oath state that the above report is true in substance and in fact.

X. U.

Subscribed and sworn to before me this ——— day of ———, 18—.

L. T.,
Notary Public.

[Seal.]

Receipt.

———, ———, 18—.

Received of X. U., treasurer of the city of ———, the following amounts for the purposes herein stated, to wit:

Amount for redemption and payment of bonds, ... $———
Amount for payment of interest on bonds, ... $———

Total received, ... $———

A. B.,
C. D.,
Sinking Fund Commissioners of the City of ———.

Sec. 3126*d*. Commissioners' report and publication. 4. It shall be the duty of said commissioners to publish in a daily newspaper of general circulation in the city where they are appointed, on the last Monday in June and the last Monday in December of each year, a statement and report of the amount of money in their hands as such commissioners, and the objects to which the same is to be applied; which statement and report shall be verified by their affidavit, and one copy thereof shall be forthwith filed in the office of the city clerk and by him recorded in the minutes of the proceedings of the common council, and one copy of such statement and report shall by such commissioners be filed with the clerk of the circuit court. [El. Sup. § 699.]

Report of Sinking Fund Commissioners.

To Whom it May Concern:

The undersigned, sinking fund commissioners of the city of ———, State of Indiana, herewith submit their report for the six months ending on the ——— day of ———, 18—, viz.:

REDEMPTION FUND.

They are chargeable with the following amounts, to wit:

Amount of fund for redemption and payment of bonds as by last report, ... $———
Amount received for redemption and payment of bonds since last report, ... $———

Total on hand at the beginning of and received during the last six months for redemption and payment of bonds, . . $———

They are entitled to the following credits, to wit:

Amount paid out for redemption and payment of bonds, . . . $———

Remainder now on hand for redemption and payment of bonds, ... $———

INTEREST FUND.

They are chargeable with the following amounts, to wit:

Amount of fund for payment of interest on bonds, as by last report, ... $———
Amount received for payment of interest, ... $———

Total on hand at the beginning of and received during the last six months for the payment of interest, ... $———

They are entitled to the following credits, to wit:

Amount paid on interest of bonds, ... $———

Remainder now on hand for payment of interest, ... $———

A. B.,
C. D.,
Sinking Fund Commissioners of the City of ———.

State of Indiana, County of ———, *ss:*

A. B. and C. D., upon their oaths, say that the above report is true, as they verily believe.

A. B.,
C. D.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Seal.]

L. M.,
Notary Public.

[1891, p. 393. Approved March 9, 1891; and in force June 3, 1891.]

SEC. 3126*e*. Use of funds—Misapplication. 5. It shall be the duty of such commissioners to pay out of the funds in their hands, collected on account of interest on the indebtedness of such city, the interest on the bond[s] of such city as the same becomes due and payable, and as the bonds mature, the said commissioners shall pay them out of the fund provided for that purpose, and held by them. No part of the fund collected for the payment of interest on the bonds shall be used for the payment of the principal sum of any bond or bonds, and no part of the funds collected for the redemption or payment of the principal of such bonds shall ever be used for the payment of interest on such bonds: *Provided, however,* That whenever the funds which shall come into the hands of said sinking fund commissioners for the payment and redemption of the principal of such bonds shall amount to the sum of $5,000, it shall be the duty of such sinking fund commissioners to purchase such bonds of the holders thereof at the best cash price for which they may be able to obtain the same, not in excess of the market price thereof, but no such purchase shall be made without the approval of the common council; and said commissioners shall, in case they are compelled to purchase said bonds at a premium, pay said premium out of the funds in their hands for the redemption of the principal, or the funds in their hands for the payment of the interest thereon, at the discretion of such sinking fund commissioners. For any misapplication or diversion of any moneys coming to their hands, the said commissioners shall be liable upon their bonds, and the judgment in every such action shall, in addition to the principal sum recovered, include a penalty of ten per cent. on such sum, and an attorney's fees of ten per cent. on such principal sum and penalty. Any person or persons aggrieved by the misapplication or diversion of such funds may maintain an action on the bonds of the said commissioners as relators in such action, and such action may, at the option of the person aggrieved, be prosecuted against either or both of such commissioners at the same time.

[1889, p. 32. Approved and in force February 23, 1889.]

Sec. 3126*f*. Pay of commissioners. 6. The said commissioners shall be allowed and paid for all their services such per centum per annum upon the total amount actually paid out by them as may be determined by the common council, and no more, such payment to be made out of the city treasury upon the order of the common council. [El. Sup. § 701.]

Sec. 3126*g*. Removal of commissioners. 7. Such commissioners in any city may be removed from their trust by the judgment of the circuit court having jurisdiction, upon the complaint of any tax-payer of such city or of any person holding any bond, or interest warrant payable out of the funds in the hands of such commissioners, upon proof of any neglect or violation of the duties of such trust. [El. Sup. § 702.]

Sec. 3126*h*. Vacancies. 8. Vacancies in the office of such commissioners shall be filled by election by the common council of said city. [El. Sup. § 703.]

[1879 S., p. 85. Approved March 18, 1879, and in force May 31, 1879.]

Sec. 3127. Surrender of charter. 1. The tax-payers of any city in this State with a population of less than seven thousand inhabitants may surrender the charter and organization of such city as a municipal corporation, in accordance with the provisions of this act.

Sec. 3128. Petition—Proceedings. 2. Whenever two-thirds in number of the resident tax-payers, male and female, of such city, over the age of twenty-one years, shall file in the clerk's office of the circuit court of the county a petition, addressed to the judge of said court, desiring to surrender the charter or municipal organization (in which petition, the said municipality, by its corporate name, shall be made a party, against which summons shall be issued, returnable as in civil actions), it shall be the duty of the judge of said court, at the next term of said court, on proof of the signatures of the petitioners to said petition, to declare and decree the charter or municipal organization of such city, from thenceforth, to be null and void.

Sec. 3129. Official acts cease with decree. 3. After the entering of the decree mentioned in the preceding section by the judge, it shall be unlawful for any officer to assume or take upon himself the right to perform any duty or act as such officer of such city.

Sec. 3130. Vested rights not affected. 4. Nothing contained in this act shall be construed as affecting any vested right or contract made by such city before the rendition of the decree by the judge mentioned in section two [§3128]; but all such vested rights or contracts shall have the same force and effect as though such surrender or decree had never been made, and the remedies therefor shall continue and be enforceable against said municipality in its original corporate name.

1. Cities over seven thousand inhabitants can not be dissolved. Cases on the subject of dissolution of cities and the rights of creditors are 93 U. S. 266; 102 U. S. 472; 122 U. S. 284; 115 U. S. 550; 116 U. S. 289; 19 Wall. 107, 655; 130 U. S. 301; 15 How. 312; 2 Woods C. C. 642; 22 Fed. Rep. 421; 60 Miss. 345; 13 Fed. Rep. 334, S. C. 9 Fed. Rep. 747; 5 Fed. Rep. 860; 77 Ala. 103; 35 Fed. Rep. 32; 29 Fed. Rep. 742; 100 U. S. 514; 7 Biss. 142; 13 Sm. & Marsh (Miss.) 157; 111 N. Y. 1.

2. Questions as to whether requisite number of qualified petitioners have signed it is not triable by jury as of right, and either party may appeal from judgment thereon, 42 O. S. 215. Signers may withdraw names before petition is acted upon, *Ibid.*

Petition.

A. B., et al., vs. the City of ———. *No.* ——.

To the Judge of the ——— *Circuit Court:*

The undersigned, being two-thirds in number of the resident tax-payers, male and female, of the city of ———, in the State of Indiana, desire to surrender the municipal organization of said city.

[Signed.]

Summons.

[A summons should be issued upon the order of the court, after the petition is docketed. An entry on the order book should be made of this order, and the substance of this order endorsed on the back of petition and signed by the judge. An ordinary summons may be used.]

Order-Book Entry.

[*Title.*] Comes now A. B., and others, by their attorney, N. P., and show to the court that the petition of A. B., and others, herein was filed in this court on the ——— day of ———, 18—, which petition is in these words, to wit: [*Here insert.*] And it is also shown to the court that on the ——— day of ———, 18—, a summons was issued for the said city of ———, returnable on the ——— day of ———, 18—, the first day of the next term of this court, which summons, as shown by endorsement thereon by the sheriff of ——— county, was served on said city on the ——— day of ———, 18—, and which summons and return are in these words, to wit: [*Here insert.*] And now said city is three times called, and comes not, wholly making default herein; and the court, having heard the evidence and argument of counsel, finds that two-thirds in number of the resident tax-payers, male and female, of said city of ———, over the age of twenty-one years, have signed said petition and filed the same in the clerk's office of this court, expressing a desire to surrender the municipal organization [*or, when organized under a special act*, charter] of said city. It is therefore ordered, declared, and decreed that said municipal organization [*or*, charter] be and the same is hereby surrendered, and said city as a municipal corporation is hereby wholly dissolved and rendered null and void.

[1875, p. 25. Approved and in force March 9, 1875.]

Sec. 3131. Constructing harbor. 1. Any incorporated city in this State, situated upon or adjoining any harbor connected with a navigable stream or lake, or upon any natural water-course which, by dredging or otherwise, may be made into a harbor, is hereby authorized to construct an entirely new harbor, or may extend, widen, deepen, repair or otherwise improve, any harbor now made,

partially made, or in process of construction; and, for that purpose, may loan the credit of the city, as is now provided by law in cases of public improvements.

Sec. 3132. City may do the work. 2. Such city may undertake and perform the work without sub-letting, if the common council shall deem it best; in which case the work shall be under the supervision of a committee of the common council appointed for that purpose, to which committee may be added the city engineer. All estimates of work upon which payment is demanded shall be certified to be correct by the city engineer; and no payment for work or materials furnished shall be anticipated. Appropriations for the payment for such work and materials shall be made, from time to time, by the common council, out of the funds raised for such purpose, as may be necessary for an expeditious prosecution thereof.

Sec. 3133. Contract. 3. Such city may let such work to any person or company, by first publicly advertising in such manner as the common council may deem best; and the work shall be let to the lowest responsible bidder. But before the work is commenced, and before such contractor shall be entitled to payment for any work or labor done or materials furnished, he shall make and enter into bonds, with adequate penalty, with good and sufficient security, to be approved by the committee in charge of said work, for the faithful performance of his contract; and, during the progress of the work, such contractor shall not be entitled to receive within twenty per cent. of the value of the work done or materials furnished until the completion of the whole; and in no case shall the city engineer certify the correctness of any bill beyond eighty per cent. of the value of the work done or materials furnished.

[1877, p. 19. Approved and in force March 3, 1877.]

Sec. 3134. Map and profile—Estimate. 4. Before any bonds shall be issued or work done under sections 3131 to 3141, the common council shall cause the city engineer to make a map and profile of the work proposed to be done, and an estimate of the cost thereof, which shall be filed in the office of the city clerk; which map and profile shall be notice, to any and all parties interested, of the manner in which they are affected by said contemplated work. If any such harbor or natural water-course be or shall be crossed by any railroad, before the commencement of the work in this act authorized, the map and profile of the improvement contemplated shall include and show such bridge, railroad tracks, side-tracks, railroad ground, and switches over and across such harbor or natural water-course, and for a sufficient distance on each side thereof, to indicate and show all contemplated changes of the location of said bridge, railroad tracks, side-tracks, railroad ground, and switches, also all such contemplated changes, and all additional lands for right-of-way for such railroad or for depositing earth (commonly called right-of-waste) deemed necessary by such change,

and to enable the same to be properly made. And the city shall have the power to appropriate the lands, so included in said map, for such additional right-of-way or waste; and when such appropriation is made, it shall inure and belong to and become the property of the company owning or in the possession of said railroad, upon payment to said city of all costs therefor, in the same manner and to the same extent as if taken by such company under and in pursuance of its charter.

[1875, p. 25. Approved and in force March 9, 1875.]

Sec. 3135. Appropriation of land. 5. All incorporated cities in this State shall have power to appropriate so much of the land belonging to any person or persons, abutting on or adjoining any natural water-course which it is proposed to make into a harbor, necessary to the construction and completion thereof; and the land which is appropriated shall be particularly described on the plat and profile aforesaid.

Sec. 3136. Condemnation. 6. Such appropriation shall be deemed to be made as soon as such plat and profile is filed in said clerk's office; and thereafter, if the city and the land-owners affected thereby shall be unable to agree upon the value of the land taken and damages sustained or benefits arising therefrom, or if the owner be a non-resident of the county, an infant, lunatic, or idiot, the said city may condemn the land thus appropriated in the same manner as lands are now condemned by cities for streets and alleys, and the committee appointed by the common council for such purpose shall be constituted the appraisers for condemning land, as in this act provided.

Sec. 3137. Notice of appraisement. 7. Whenever the common council shall, by resolution, recite the fact that the city is unable to agree with any land-owner or owners as to the value of the land taken or damages sustained or benefits accruing, or that any of the owners are infants, lunatics, or idiots, said resolution shall be sufficient authority for said commissioners to proceed to appraise the land appropriated, the damages sustained, and benefits accruing; but before such appraisement shall be made, ten days' notice, by publication in any newspaper of general circulation in in the county, shall be given of the time and place when and where said commissioners will meet to make said appraisement; which notice, verified by the affidavit of the publisher or owner of said paper, shall be returned with their appraisement by said commissioners.

Sec. 3138. Report. 8. The value of the lands appropriated, together with the benefits and damages, shall be considered by such commissioners and determined by them, who shall return the same to the city clerk within five days after making and completing it; which report of said commissioners shall describe the land appropriated, the value thereof, and the damages and benefits

which will accrue to the owner by reason of the proposed improvement or the appropriation thereof, and all lands adjacent or near said proposed work, and directly benefited thereby, may be assessed for benefits which will accrue by reason of the proposed work.

Sec. 3139. Possession after tender. 9. The city shall be entitled to the possession of the land, for the purpose aforesaid, as soon as a tender of the money shall have been made to such owner, or if he be under disability, then to his guardian; and if there be none, or the owner be a non-resident, then by the payment thereof to the clerk of the circuit court of county in which said land is situate, who shall receive the same and hold it, by virtue of his office, for such owner or his legal guardian.

Sec. 3140. Appeal. 10. Either party may appeal from such assessment within thirty days after such assessments are filed, and shall be governed in such appeal as is now provided by law for appeals from assessments for streets and alleys.

Sec. 3141. Assessments are liens—Foreclosure. 11. All assessments of benefits shall be collected by installments, in such manner as the common council shall, by resolution, provide, and shall be liens upon the lands against which they are assessed; and it shall be the duty of the commissioners, in returning said assessments, to prescribe particularly the lands benefited. All assessments for benefits shall belong to the city, and may be foreclosed, whenever any installment shall become due and remain unpaid, in the name of the city, in the same manner as foreclosure of mortgages are enforced, and shall be collected without relief from valuation or appraisement laws.

[1877, p. 20. Approved and in force March 3, 1877.]

Sec. 3142. Harbors—Slips—Docks—Regulating. 1. All incorporated cities within the State, adjacent to and within which any public harbor may be located and constructed, shall have power to regulate all harbor channels, slips, or other water-thoroughfares and docks, and to repair those already constructed, bordering upon such channel, slip, or thoroughfare and dock property within a distance of eighteen feet back from the water-front of such property situated upon such harbor, and may, by proper ordinance, compel all land or lot-owners whose land or lots border or front upon such channel, slip, or thoroughfare, to make and construct proper docks or revetments, so as to prevent the washing or filling in of earth or other substances into such channel, slip, or thoroughfare.

Sec. 3143. Owners to repair. 2. It shall be the duty of the common council to provide, by ordinance, in what manner and within what time all docking shall be done, and, by resolution, in what manner and within what time all necessary repairs shall be done; and upon service of notice upon any property-owner of the

passage of any ordinance or resolution requiring the construction or repair of any dock in front of any land, lot, or lots owned by any party, it shall be the duty of such owner to construct or repair such dock in accordance with the requirements of such ordinance or resolution.

Sec. 3144. Notice. 3. All notices required by this act shall be in writing, and issued and signed by the city clerk, and shall be served by the city marshal. Notice of ten days shall be given in all cases where notice is required by this act to be given, except where the property-owner is a non-resident of the county, or is an infant, idiot, or lunatic, when such notice shall be by publication in some newspaper in said city, of general circulation, if there be any, and if not, in some newspaper of general circulation nearest thereto, published in the State of Indiana, for three successive publications, which publications shall be deemed equivalent to personal service of notice.

Sec. 3145. Construction. 4. If any such owner or owners, after legal service of notice to construct or repair their respective docks, shall fail or refuse so to do within a reasonable time, such city may, at its option, construct such docks or make such repairs, or, by advertisement for bidders, published in some newspaper of general circulation in any such city, let such construction or repairs, by contract, to the lowest responsible bidder; and the cost thereof, in either case, shall be assessed against the property of such owner or owners so fronting or abutting on said harbor or thoroughfare, by the city commissioners, as other property is now assessed for benefits for public improvements: *Provided*, Said commissioners shall not be confined in making assessments for the construction of docks to the property immediately fronting on such harbor, but may assess any other property adjoining such frontage which will be benefited thereby: *And provided, further*, That in cases of repairs only, the cost thereof must be confined to the property immediately fronting on said harbor or thoroughfare.

Sec. 3146. Plan and estimate. 5. Before the work is commenced, a plan and specifications of the work contemplated, together with an estimate of the cost thereof, shall be made by the city civil engineer, approved and adopted by the common council, and filed with the city clerk; and no more shall be assessed against the property benefited by such improvement than shall be necessary to complete the work contemplated.

Sec. 3147. Return of assessment. 6. When said commissioners shall have made their assessments, they shall return them to the city clerk's office within ten days thereafter, who shall lay them before the common council at their first meeting thereafter; and the said common council shall, within thirty days thereafter, either adopt or reject such assessments. If adopted, said assessments shall become a lien, from that time, upon the lands against which the as-

sessments are made. The common council may also provide for the payment thereof in installments, in such sums and at such times as they may deem best.

Sec. 3148. Assessments, how collected. 7. The said assessments shall be collected by said city, and in its name; and the said several amounts, so assessed, shall be payable without relief from valuation or appraisement laws. The proceedings shall conform to and shall be enforced in the manner now provided by law for the collection of mechanics' liens or the foreclosure of mortgages.

Sec. 3149. Liability of city—Superintendent. 8. No city shall be liable to any contractor beyond the liability of such property-owner to such city, and all contracts shall be at the risk of the contractor. The work shall be under the superintendence of the city engineer.

Sec. 3150. Proceedings. 9. In all cases not specially provided for in this act, all persons interested may have the benefit of the proceedings provided for under an act approved March 9, 1875, entitled "An act to authorize incorporated cities in this State to construct, extend, widen, deepen, repair, and improve harbors, and, for that purpose, to condemn the lands of persons through or adjoining which such harbor may run, and to assess damages and benefits against adjoining owners, where and when the same may be applicable." [§§ 3131 to 3141.]

[1881 S., p. 391. Approved and in force April 14, 1881.]

Sec. 3151. Sewers—Drains—Cisterns. 3. The common council shall have power to construct and regulate sewers, drains, and cisterns, and provide for the payment of the cost of constructing the same and when, in its opinion, the construction of any sewer would be of public benefit to the city and necessary for the improvement of any street or streets, for the removal of surface or storm water therefrom, may, by a two-thirds vote, cause to be paid out of the city treasury such portion of the cost of the construction of such sewer as, in the opinion of said council, would be equitable and just.

1. See § 3106, clause 43, and *notes*. The action of the council under this section is not reviewable by the courts, 34 Ind. 471. The general drainage law applies to cities, acts 1885, p. 130, § 2; El. Sup. § 1185; previous to 1885 it did not, 101 Ind. 539.

2. "The sewer here provided for is a part of the street improvement, made so by the statute itself, and is only to be made when necessary to remove the surface or storm water from the street," 121 Ind. p. 339.

[1889, p. 13. Approved and in force February 14, 1889.]

Sec. 3151*a*. City may construct levees—Procedure. 1. Whenever the common council of any city is of the opinion that the construction, repair or maintenance of any levee or levees for the protection of the city or property within the corporate limits thereof is of sufficient public interest to justify construction, repair, or main-

tenance thereof by the city, the common council may by resolution cause surveys and location and estimates of the costs thereof to be made, or if for improvement or repairs only, may cause surveys and estimates of the costs thereof to be made, and both kinds of surveys and estimates may be made when expedient and may provide by ordinance on return of surveys and estimates for doing the work and appropriate money from the general funds of the city not otherwise appropriated for that purpose and provide by ordinance the means required by a levee tax of not exceeding four per cent. on the valuation of property, and by assessment of benefits on the property benefited, as in case of opening or change of streets, except that when the benefits are to be assessed the city shall cause a roll to be made from the tax duplicate and assessment rolls perfecting any imperfect descriptions of lands and lots and from the surveys outside the corporate limits, which latter shall be separate from the former, and the roll shall be of convenient form to allow the benefits assessed to be set opposite the several parcels described in a designated column, and shall append thereto a resolution of the common council requiring the city commissioners to meet on a day named in the resolution and enter upon the duty of assessing the benefits to the lands and lots described on the roll, a copy of which resolution shall be served on the commissioners and they shall meet at the council hall on the day named and receive the roll, and enter upon their duties, and shall proceed with reasonable expedition, and when their duties are performed, shall return the roll into the clerk's office of the city, duly executed, and so certify over their signatures. And the roll may be amended at any time as to omitted or imperfectly described lands or lots, and ownership thereof, and the benefits thereto assessed by the commissioners. On such roll being returned, the clerk shall cause notice thereof to be given for two weeks, by publication in a newspaper of the city, or if none is published therein, by posting notices at five public places therein for two weeks, stating that the assessment of benefits roll has been returned, and that on a day fixed, not earlier than the expiration of the notice, the city commissioners will meet at the council hall as a board of equalization of benefits, and will hear and determine all complaints of property owners assessed, and they shall be attended by the city clerk as clerk of the board, and shall meet from day to day until the business is completed, and then perfect the roll as then determined upon, and make final return thereof; and said roll shall be final and conclusive as to all property owners not appearing, and those appearing may appeal to the common council at the next regular session, if aggrieved, and at such meeting of the common council action may be taken thereon, both as to appeals and final action, approving or rejecting the same, and if approved the same shall stand as the roll of benefits, and the tax duplicate, provided for in this act, shall be made therefrom as to the benefits And any one

aggrieved by the action of the common council, may appeal therefrom to the circuit court of the county wherein such city is situated, within twenty days, upon filing with the clerk of such city, a sufficient bond conditioned for the payment of all costs and damages occasioned by such appeal, and the trial of such appeal shall be conducted as other trials of civil causes are conducted in said court. The city clerk shall, upon the filing of said bond, forthwith make out and certify, under his hand and official seal, a true and complete copy of all papers connected in any way with said matter, beginning with the order of the council directing the work to be done and contracted for, and including all notices, precepts, orders of council, bonds and other papers filed in said matter, which transcript shall be in the nature of a complaint, and to which the appellant shall answer upon rule, and the same shall thereupon be tried in all respects as other civil cases are tried, and the result thereof certified by the clerk of the circuit court to the city clerk. And no other notices or greater formality shall be required in the assessment of benefits, which benefits shall be collected and collection thereof be enforced, as taxes are collected, and otherwise such benefits shall be assessed as provided by law for opening and changing of streets: *Provided*, That the taxes and benefits assessed may be divided into not exceeding six equal parts in each individual case, or in case of joint, or tenant in common ownership, each such ownership shall be as an individual case; and the whole taxes and benefits so divided, shall be placed on the tax duplicate as taxes are placed, either before, at the time, or after the duplicate is otherwise made up, and may be placed on a separate book if most convenient, which shall be a part of the tax duplicate, and be a lien on the real estate and property taxed or benefited from the time assessed, and be collected and paid, one installment each year, as other taxes are collected, such taxes and benefits may be levied and assessed at any time, and such benefits assessed and taxes assessed may be anticipated by the city in making the contract for doing the work, not exceeding the fund so provided, and as otherwise provided. The tax and benefits provided for shall continue and be paid each year in installments, during the period provided, and both funds shall be sacred to the levee and shall not be applied to any other use until such work is completed and paid for. The whole tax and benefits may be anticipated in contracting for the work, and, to the extent anticipated, shall thereby be irrevocably appropriated to such payment until complete. [El. Sup. § 747.]

Order for Estimates.

Whereas, it is the opinion of the common council of the city of ——— that a levee should be constructed from ——— street to ——— street along the south bank of ——— creek, for the protection of the city and the property within its corporate limits; therefore it is ordered that the city civil engineer of said city make a survey and estimate of the cost of constructing said proposed levee.

Estimate of Cost.

[See form under § 3073, which can be modified.]

Ordinance for a Levee.

AN ORDINANCE FOR A LEVEE ON THE LEFT BANK OF ——— CREEK.

SEC. 1. *Be it ordained by the Common Council of the City of* ———: That a levee of earth on the left bank of ——— creek from a point 200 feet east of ——— street to ——— street be established and constructed as follows: It shall be graded according to the stakes to be set by the city civil engineer on the following grade, to wit: Beginning at station "O" 200 feet east of said ——— street, thence continuing in a westerly course 40 feet from the center of the stream of said creek to ——— street, with a uniformly descending grade of —— feet in a —— feet, according to the profile thereof now on file in the office of the city civil engineer of this city. Said levee shall be 25 feet wide at the top, with the sides thereof sloping at an angle of —— degrees. All trees, brush and perishable materials shall be first removed from the space to be covered by the levee, and the base plowed before the embankment is begun. The earth to construct said levee shall be furnished by the contractor. There shall be constructed in connection with said levee two break-waters, one at the end of ——— street and the other immediately below where ——— street crosses said creek. The cribs of said break-waters shall be 10 feet wide at the bottom and 6 feet wide at the top and filled with stone; the timber thereof to be sound white oak, burr oak, pin oak, red elm or timber equally good, and hewed on two opposite sides to the faces, not less than 6 inches wide, and to be 9 inches thick. In building the cribs the joints shall be secured by cross-ties of sound oak 3 inches thick and 12 inches wide. Said levee immediately above each of said break-waters shall be rip-rapped with stone of proper size and properly laid, under the directions of the city civil engineer. Twenty feet in the center of the top of said levee shall be graveled with good creek gravel to a depth of 15 inches in the center, sloping to 5 inches at the sides, so as to make a drive-way along the top thereof. All earth, gravel or stone work and stone and brush projections to be paid for by the cubic yard; all timber work to be paid for by the lineal foot; and all work to be done to the satisfaction of the city civil engineer.

SEC. 2. The total expense for doing said work, including the furnishing of all material therefor, shall be assessed against the real estate benefited thereby; the amount of benefits to be charged to the respective parcels of real estate benefited shall be by the city commissioners of this city assessed in the manner provided by law for the opening and grading of streets. All of said costs and expense shall be paid in one installment by the owners of the real estate benefited, and shall be collected in the mode and manner provided by law. No part of any of the expense thereof shall be charged to or collected of said city. All city officers are hereby required to perform all the duties provided for in the act of the general assembly of the State of Indiana, entitled "An act authorizing cities to construct, repair and maintain levees and matters connected therewith, and declaring an emergency," approved February 14, 1889; and all of said work and the collection of the costs and expenses thereof shall be done pursuant to the provisions of said act. The contract for doing such work shall be let to the lowest responsible bidder. The contractor shall be required to enter into a contract to do said work, including all the necessary material therefor; and give bond with surety to be approved by the council, in the sum of $5,000, conditioned for the faithful performance of said work according to the plans and specifications herein contained and to the profile and plan of said levee now on file in said engineer's office, which are hereby adopted. This city shall in no wise be liable to construct, keep, maintain or repair said levee; nor for any damage resulting from the construction or maintenance thereof.

SEC. 3. The city civil engineer is hereby directed to set the proper grade stakes, and also to advertise by publication one day each week, for three con-

secutive weeks, in the *Argus-News* of this city, that sealed proposals for the execution of said work will be received by the council on the day named in said advertisement.

SEC. 4. This ordinance shall be in force from and after its passage.

Resolution of Reference.

Resolved, that the matter of assessing the benefits that will be occasioned by the construction of the levee from ——— street to ——— street, within this city, be and the same is hereby referred to the city commissioners of this city, who shall meet at this council's hall on the ——— day of ———, 18—, at 10 a. m., and receive said roll and enter upon their duties in said matter.

Notice to Commissioners.

To A, B, C, D, E, and F: You are hereby notified to meet, according to the terms of the accompanying resolution, at the council hall of this city of ——— county of ———, and State of Indiana, on the ——— day of ———, 18—, to consider such matters as may be there laid before you. By order of the common council of said city.

N. S.,
City Clerk.

[City Seal.]

Marshal's Return.

Served the within notice by giving a certified copy to each of the persons within named, and a copy of the resolution referred to therein, on the ——— day of ———, 18—.

R. U.,
City Marshal.

[A copy of the resolution must be served on each commissioner by the marshal. It need not be certified to.]

Assessment Roll.

Assessment roll containing a list of lots and tracts of land that will be benefited by the construction of a levee from ——— street to ———street, along the south bank of ——— creek, within the city of ———, county of ———, and State of Indiana, ordered constructed by the common council of said city on the ——— day of ———, 18—.

Property within the city of ———, to wit:

Name of Owner.	No. Lot.	Addition.	Amount of Benefits.	Benefits as equalized.	Value.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total, ...			.....	.....	.....

Property without the city of ———, to wit:

Name of Owner.	Description.	Amount of Benefits.	Benefits as equalized.	Value.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Total, ...		.....	.....	.....

[Append resolution of reference, and add the following certificate.]

Clerk's Certificate.

State of Indiana, County of ———, *ss.*

I, clerk of the city of ———, of said county and State, hereby certify that on the ——— day of ———, 18—, the above and foregoing resolution of reference was adopted by the common council of said city, as appears from the records thereof.

In testimony whereof I have hereunto set my hand and the seal of said city of ———, this ——— day of ———, 18—.

N. L.,
Clerk of the City of ———.

[Seal.]

Report of City Commissioners.

To the Common Council of the City of ———:

We, the undersigned, city commissioners of said city of ———, county of ———, and State of Indiana, hereby certify that we met at the council hall of said city, at 10 a. m. on the ——— day of ———, 18—, as directed by resolution of your honorable body, adopted on the ——— day of ———, 18—, and we assessed the benefits to each tract and lot of land as described and stated in the above and foregoing assessment roll.

Respectfully submitted.

Dated ———, 18—.

[Signed] _____
City Commissioners.

[This report should be written upon the assessment roll.]

Clerk's Notice.

Notice is hereby given to [*name the persons assessed with benefits*] that the city commissioners will meet at the council hall of the city of ———, State of Indiana, at 10 a. m. on the ——— day of ———, 18—, to hear any and all complaints you may desire to lay before them, and will equalize any and all benefits that will be caused by the construction of a levee from ——— street to ——— street, along the south bank of ——— creek, in said city, as ordered constructed by the common council thereof on the ——— day of ———, 18—.

N. L.,
Clerk of the City of ———.

[The city commissioners must take notice of the time set in the notice and meet accordingly.]

City Commissioners' Report on Equalization.

To the Common Council of the City of ———:

We, the undersigned, city commissioners of said city, and State of Indiana, hereby certify that we met at the council hall of said city, at 10 a. m. on the ——— day of ———, 18—, of which meeting two weeks' notice by publication in the *Argus-News*, a newspaper of said city, had been duly given by the clerk of said city, a copy of which notice is filed herewith, and after hearing all complaints, we equalized the assessments set out in the above assessment roll, as therein stated. There appeared before us the following persons, to wit: [*Name them.*]

All of which is respectfully submitted.

Dated, ———, 18—.

[Signed] _____

City Commissioners.

[This report should be appended to the assessment roll.]

Notice of Appeal to Council.

To the Common Council of the City of ———:

You are hereby notified that in the final report and equalization of the city commissioners of said city in the assessment of benefits for the construction of the levee, within said city, from ——— street to ——— street, along the south bank of ——— creek, that I hereby appeal from the assessment of benefits as assessed to the following described real estate, described in the assessment roll in said matter, owned by me, to wit: [*Describe the land*] for the reason that the said land is not benefited in the amount therein assessed to it.

Dated, ———, ———, 18—.

[Signed] _____

Journal Entry.

Resolved by the common council of the city of ———, that in the matter of constructing a levee from ——— street to ——— street, along the south bank of ——— creek, in said city, county of ———, and State of Indiana, that the assessment of benefits made by the city commissioners of said city on the ——— day of ———, 18—, and as equalized by them on the ——— day of ———, 18—, be and the same are hereby approved, and the several amounts assessed to the several tracts and lots of land therein is hereby declared a lien thereon, and is ordered collected, except that the assessment of $———, assessed to A. B. upon the following described land [*describe it*] is hereby reduced and fixed at $———. The clerk of this city is hereby ordered to place said assessments upon the tax duplicate of the city [*or*, ——— county].

[The appeal bond and skeleton of transcript found under § 3165 can be modified and used.]

Sec. 3151*b*. Contract—Payment—City orders. 2. The contract for the work shall be let to the lowest responsible bidder, on such notice and sealed bids and bond as may be provided for in the ordinance, the work to be paid for from the general funds appropriated for that purpose, and from the tax and benefits assessed, so that no indebtedness of the city under the contract will exist in excess of the funds on hand appropriated to the payment thereof, until the current funds applicable are in the treasury to cancel the same. But the execution of the contract for the work shall subrogate the contractor, on performance by him, as stipulated to the

lien of the city for the taxes and benefits assessed, as in this act provided, to the extent required to pay for the work, without affecting the right and duty of the city through its proper officers to collect the taxes and enforce the collection thereof, as authorized by law, and the expense of such work and the maintenance thereof shall be deemed of the current expense of the city, having the special benefit separately of the provisions of this act. And said funds may also be anticipated otherwise, in any manner authorized by law for other taxes, and when the taxes and benefits are so assessed, and the lien thereof fixed, as herein provided, orders may be drawn on the city treasury, payable out of the funds as the common council may direct, in denominations from $100 to $10,000, showing that they are secured by the tax and benefit liens amounting to the sum of such taxes existing and in the installments thereof payable as fixed, and that they will be received by the treasurer in payment of the taxes and benefits of the year named, and no more shall be drawn against the fund for any year than four-fifths of the amount collectible in that year. Such orders shall be drawn payable to bearer, and be good to any *bona fide* holder, and as many series of such orders may be issued as the annual payment of taxes and benefits provided for; and each series shall stand secured by the tax and benefits lien of that year, and be payable therefrom, and may be applied on the work as it progresses, as may be provided for in the contract or contracts for the work, or the orders may be negotiated under the direction of the common council, and the contract made, paid in cash from the proceeds of the said orders, and when so applied or negotiated shall stand performed as against the contractor under the contract, and shall stand secured and shall have the full force and virtue herein provided for the contract first herein authorized, and all such orders, when taken up by the treasurer, shall not be again negotiated, but shall be canceled. [El. Sup. § 748.]

Notice to Contractors.

Notice is hereby given that sealed proposals will be received by the common council of the city of ———, at the office of the city civil engineer, on or before 4 o'clock p. m., on the ——— day of ———, 18—, for the construction of a levee on the left bank of ——— creek, from a point 200 feet east of ——— street to ——— street, and building the necessary breakwaters and rip-rap thereon.

All of said work to be done according to the provisions contained in the ordinance of the common council of said city, entitled "An ordinance for a levee on the left bank of ——— creek," adopted on the ——— day of ———, 18—, and according to the plans, maps, specifications, and profiles on file in the offices of the city clerk and city civil engineer of said city. Said work to be paid for in the manner set forth in said ordinance. The contractor will be required to enter into a contract to do said work, and to furnish all material, and to provide a bond as provided in said ordinance; and to complete said work within ——— days from the approval of the contract and bond.

R. L.,
City Civil Engineer.

———, Ind., ———, 18—.

[For contract, see § 3162, which can be modified.]

Sec. 3151*c*. Jurisdiction of city extended—Plans. 3. For the purposes herein provided, the jurisdiction of the city is extended four miles beyond the corporate limits and the lands to be protected may all be assessed with the benefits. And authority is given to the city to enter upon the lands and make surveys, doing no unnecessary damages, and to purchase, receive conveyances of, and hold the necessary lands for right of way and construction and maintenance. In case such lands can not be so obtained by contract, they may be condemned and taken by the city as railroad corporations are authorized by law to condemn and take real estate for right of way and other railroad purposes, except that the surveys, location, and plan of the levee, or a copy thereof, shall be filed in the recorder's office of the county, and in the city clerk's office; and no other map or profile shall be required; which survey and plan shall be certified by the city clerk under seal, as the survey and plan adopted by the common council, or a true copy thereof. [El. Sup. § 749.]

The law authorizing appropriations is §§ 3907 to 3910 of Rev. Stat. 1881. Forms and instructions for §§ 3907 to 3910 can be found in 3 Works' Practice, p. 521, from No. 759 to 766 inclusive.

Sec. 3151*d*. Clerk's duties—Sale of land. 4. The city clerk shall copy from the duplicate the lands and benefits assessed outside of the corporate limits of the city, and certify the same under the seal of the city, and deposit the same with the county treasurer in his office, and it shall be his duty to collect the same annually as required by ordinance under this act, and pay the money to the city treasurer when requested by him, deducting the fees allowed by law for collecting other taxes. And the duplicate required by this act, and said transcript filed in the county treasurer's offices, shall be due notice of the lien of the taxes and benefits assessed. The county treasurer shall report to, and make settlement with the common council as to such benefits, the same as he is required by law to do with the board of county commissioners, and will advertise, and with the county auditor, sell the lands of delinquents as required by law for other delinquent taxes, and make certificate of purchase and conveyances as required by law, with like force and effect. [El. Sup. § 750.]

Sec. 3151*e*. Sufficiency of duplicates—Plats. 5. The duplicates required shall describe the lands assessed with benefits competently, and the city civil engineer is required to make all necessary surveys and plats to furnish such description. [El. Sup. § 751.]

[1873, p. 58. Approved and in force March 6, 1873.]

Sec. 3152. Aid to roads, bridges, etc. 60. Any incorporated city, under this act, shall have power to borrow money, to subscribe to the stock of any plank-road, macadamized-road, or railroad, running into or through such city; or to any bridge com-

pany organized under the laws of this or any other State, to construct a bridge across any river or water-course within or bordering on this State, where such bridge has its termini, or either terminus, within such city; or to public improvements or public works,—to make donations in money or bonds of such city to aid in construction of such roads or bridges or public improvements or public works, only on petition of a majority of the resident freeholders thereof: *Provided*, That said donations shall not be payable either in money or bonds until the roads or bridges or public improvements or public works, in aid of which it is given, shall be so far completed as to admit the running of trains from the point of commencement to such point or points as are designated in the petition, in case of a railroad or railroad bridges; or the passage of wagons in the case of other roads or bridges; and, in case of public improvements or public works, upon the completion thereof. And when so far completed, it shall be obligatory on the common council of said city to contract and do whatever may be necessary to carry into effect the substantial meaning of such petition; and the obligation herein enjoined may be enforced in the courts of this State having competent jurisdiction, on the application of any signer of such petition or president of any road or bridge company in behalf of which such donation may have been made, at any time after said petition or petitions have been presented to such common council. And for any debt created in pursuance of the provisions of this section, in carrying out the intentions of the petitioners aforesaid, the common council shall add to the duplicate of each year thereafter a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the one hundred dollars, to create a sinking fund for the liquidation of the principal thereof; which fund, with all the increase thereof, shall be applied to the payment of such debt, and to no other purpose.

1. As to cities having a voting population of over sixteen thousand, the provision as to sinking fund is repealed by section 3122.

2. Under this section, *mandate* will lie against the city to compel the issue of bonds, where the petition and other preliminary steps have been duly taken, 57 Ind. 152; 83 Ind. 502.

3. The term "donation," as used in this section, means an absolute gift, without any condition or consideration, 56 Ind. 476; 61 *id.* 1.

4. For note on bonds, see § 3119. This *statute* is *valid*, 9 Ind. 74; 73 Ind. 543; 52 Ind. 563; 29 Ind. 305; 22 Ind. 88.

5. Those signing the petition may *withdraw* their *names* at any time before the council acts upon the petition; and a reference of the petition by the council to a committee of its own members is not such an action thereon as prevents the withdrawal of the names. A petitioner who signs his name to a *remonstrance* withdraws it thereby from the petition, 42 Ind. 125. After having been acted upon the name can not be withdrawn, 15 Ind. 395.

6. This section does not authorize a subscription to a railroad company for the purpose of building *machine shops*, even though the amount given is to be returned; and all such proceedings are void, 56 Ind. 476. The legislature can not authorize such a subscription, 20 Wall. 655; 106 U. S. 487; 113 U. S. 1.

7. Before the common council can acquire *jurisdiction* to act under this statute to make a donation, the petition must be signed by a "majority of the *resident freeholders*" of the city, which includes all persons resident within the city and owning a freehold interest in land, all of whom must be counted, 108 Ind. 74; and a petition for a mandate to compel the city to make the donation must contain that allegation, 108 Ind. 74; 57 Ind. 152; nor is the city estopped, where it declines to follow the petition and adopts a resolution making the donation, from showing that the petition did not have the requisite number of signers, 57 Ind. 152. If the council decides that the requisite number has signed the petition, that finding is not final, 83 Ind. 502. A *petition* was only necessary prior to 1869 to authorize a donation; and was *not necessary* to authorize a subscription, 29 Ind. 305; but such is not the case now, 83 Ind. 502.

8. Bonds *without interest* may be issued, even a single bond. The council has no power to fix a rate of interest, unless, at least, the petition of the resident freeholders ask that the bonds issued bear interest, 57 Ind. 152.

9. The fact that one of the *councilmen* was a *stockholder* in the company to be benefited, and thereby interested, it was held not to avoid the proceedings, 57 Ind. 152; but afterwards it was ruled that if his vote was necessary to secure favorable action on the petition, such proceedings thus carried were a nullity, 83 Ind. 502.

10. A subscription in which the *amount* to be donated is left *blank* when signed, can not be avoided by showing that such blank was filled up for more than was really agreed upon. By such an act those signing authorize the one procuring their signatures to fill up the blank. If this objection can be raised, it must be before the council, 57 Ind. 152.

11. The city may *levy* or enforce a *tax* for the collection of the whole amount of the *interest* whether overdue or not; and may add to such levy not less than five cents on the hundred dollars, to create a sinking fund to liquidate the principal of the debt. The levy is not illegal from the fact that it does not specify the proportion to be applied to the liquidation of each, and that is not ground upon which to enjoin the collection of the tax, 59 Ind. 400.

12. If a council has *once acted* upon a petition, it can not two years afterwards *reverse* its decision and grant the prayer thereof. 83 Ind. 502.

13. Any citizen and tax-payer may *enjoin* the illegal issue of bonds; but he can not enjoin their payment after they are issued, unless the city could successfully maintain a defense on the same ground upon which the injunction is applied for as against the then holder, 83 Ind. 502; 61 Ind. 1; 52 Ind. 563.

14. The bonds in the hands of a *bona fide purchaser* stand upon the same footing as commercial paper, 52 Ind. 563; 15 Ind. 395; 83 Ind. 502; 61 Ind. 1; 22 Ind. 18; 18 Ind. 93; 123 Ind. 41.

15. In an action against trustees of a town, for surrendering and allowing bonds executed by a railroad and held by them to secure the payment of certain sums advanced to the company by a town, it was held that the trustees could not set up the lack of power or authority in the town to take such bonds or to make such a loan, 30 Ind. 485.

16. Where the petition recited that the object of the donation was to enable the railroad to reach the city, so that its construction would enhance the value of the property of the petitioners, an answer to a petition for a mandate alleging *want of consideration* for such donation is insufficient, 57 Ind. 152.

17. The donation may be the *bonds* of the city, if the company is willing to take them *as cash*, 15 Ind. 355. They may be made *payable in New York City*, 15 Ind. 355. The *power to borrow* money includes the power to issue bonds in order to raise it, 15 Ind. 396.

18. If the city subscribes for stock, it is subject to the *same rules* and *conditions* as a *private individual*, 15 Ind. 395, and liable to the same extent, 74 Ind. 297; R. S. 1881, § 3934.

19. A *contract* for stock made by the mayor and adopted and *ratified* by the council is valid, 15 Ind. 395.

20. The council has the power to determine upon the *terms* and conditions of the contract, 15 Ind. 395. Before operative the railroad company must *accept* the offer, 22 Ind. 88.

21. To entitle the railroad company to receive the money donated, the railroad need not be perfect in every respect; but it must be so nearly completed that it may be properly and regularly used for transportation of freight and passengers, 73 Ind. 543.

22. Property in city or town within a township is liable for its proportion of a railroad tax voted by the township, 94 Ind. 1; 80 Ind. 14; 89 Ind. 540.

[1889, p. 205. Approved and in force March 7, 1889.]

SEC. 3152*a*. City may purchase stock in bridge company. 1. Any city of this or an adjoining State is hereby authorized to purchase the shares of stock in any bridge company or corporation owning a bridge across any stream forming the boundary line between this and an adjoining State where either terminus of such bridge is within or adjoining such city; and all purchases of such shares of stock heretofore made by any such city are hereby confirmed and made legal; and in case any city shall have heretofore purchased four-fifths of all the shares in any such bridge company or corporation can not agree with remaining owners as to the price to be paid therefor, or can not for any cause obtain from such owners a valid title thereto, such city may condemn and appropriate such shares for public use, and all the assessments therefor shall be made by the city commissioners of such city. And upon such purchase of all the shares of stock as aforesaid, or upon condemnation and appropriation as aforesaid, the title to such bridge and the real and personal property of such company or corporation shall vest in such city, and such bridge and the real and personal property aforesaid shall be the public property of such city and shall not be subject to taxation while owned by any such city; and such bridge shall be a public highway, free to all persons and vehicles, subject to such rules and regulations as may be passed by such city for the good government and protection and use of the same, and such fines for violation or neglect of any of the rules and regulations not exceeding one hundred dollars, as the city may deem proper. [El. Sup. § 623.]

[1869 S., p. 97. Approved and in force May 4, 1869.]

SEC. 3153. Aid to railroads, hydraulic companies, etc. 1. Any city incorporated under the general laws of this State, upon petition of a majority of the resident freeholders of such city, may hereafter subscribe to the stock of any railroad, hydraulic company, or water-power running into or through such city, or near the corporate limits of said city, or to make, on petition of the majority of the resident freeholders of such city, donations in money or the bonds of such city, to aid in the construction of any such railroad, hydraulic company, or water power, subject, however, to the limitations, direction, and restriction named in the provisos to

the sixtieth section of the act entitled "An act to repeal all general laws now in force for the incorporation of cities, prescribing their powers and rights, and the manner in which they shall exercise the same, and to regulate such other matters as properly pertain thereto," approved March 14, 1867. [§ 3152.]

This section is in force, 83 Ind. 502. Is all this section constitutional? See § 3152, *note* 6.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3154. Jurisdiction beyond limits. 54. For removal and abatement of nuisances; to carry out and enforce sanitary regulations; for the apprehension of disorderly persons, vagrants, common prostitutes, and their associates; to exact license money from all persons licensed to retail intoxicating liquors by county or state authority; and to regulate all places where intoxicating liquors are sold to be used on the premises,—the common council have jurisdiction two miles beyond the city limits.

1. Other instances in which a city may exercise authority beyond its limits are found in § 3106, clauses 2, 4, 5, 11, 26, 45; §§ 3115, 3266, 3285.

2. This section does not apply to *cemeteries*, 28 Ind. 79; nor to *houses of ill-fame*, 38 Ind. 49; but it does to a liquor license, 109 Ind. 466; 118 Ind. 279; 120 Ind. 483.

3. The legislature has power to designate the limits over which the jurisdiction of a municipal corporation shall extend, and its judgment upon the question is conclusive, 109 Ind. 466; 118 Ind. 279; 120 Ind. 483.

4. An ordinance is valid which requires all saloons to be closed between 11 p. m. and 5 a. m., the screens raised, all obstructions removed, and all persons not owners or employed therein to vacate the premises, 125 Ind. 404.

Sec. 3155. By-laws—Penalties. 56. The common council shall have power to make other by-laws and ordinances not inconsistent with the laws of this State, and necessary to carry out the objects of the corporation, and to enforce the observance of all by-laws and ordinances, by enacting penalties for their violation not exceeding one hundred dollars for any offense; which may be recovered in an action at law, with costs, as they may deem right and proper.

1. This section is usually known as the "general welfare" clause. It does not empower the council to enact an ordinance to license and regulate the establishment of *private hospitals* within the city, 71 Ind. 189. But under it the city "may regulate the storage and transportation of gunpowder; the manner of constructing buildings; the places where wooden buildings may be built; the manner in which ashes shall be stored and disposed of;" and "may prohibit the storage of inflammable oils in insecure structures,' 85 Ind. 276; 26 N. E. Rep. 184. So it may prohibit the storage of large quantities of straw (85 Ind. 279), or take down dangerous buildings within the populous part of the town, 100 Ind. 575, S. C. 50 Am. R. 830. So it authorizes the purchase of a fire-engine, 106 Ind. 129; but not the appointment of a fire-board with power to control the chief of the fire department, 100 Ind. 15.

2. Under an authority "to ordain and publish such acts, laws, and regulations as shall be needful to the good order of the city," it was said that the city had the right to "establish all suitable ordinances for administering the government of the city, the preservation of the health of the inhabitants, and the convenient transaction of business within its limits, and for the performance of the general duties required by law of municipal corporations," 37 Me. 329.

3. Under such a clause a city may require sellers *of meat* to take out a license, 124 Ill. 359; may prevent the keeping of *bawdy houses*, 11 S. C. 288. Under authority "to maintain the peace, good government, and order of the city, and the trade, commerce, and manufacturers thereof, as the council may deem expedient," the keeping *open of stores*, shops, etc., on Sunday may be prohibited, 24 Mo. 94; 40 Ala. 725; 15 Ohio, 225; 44 Ga. 204; 2 Strobh. (S. C.) L. 508, 530. Under "full power to pass such ordinances as the city council shall deem expedient for government of the city," the *sale of liquors* on *Sunday* may be prohibited, 2 Met. (Ky.) 3; 36 Conn. 215; but one to "secure the health, peace, and improvement of the city" does not authorize an ordinance *prohibiting* the keeping open of *stores* on *Sunday*, 10 Oreg. 139, *contra*, 82; Ind. 175. So under the usual clause a city may require the owner of a lot to clear the *sidewalk* adjacent thereto of *snow*, 16 Pick. 504; 11 Allen, 287; 14 Gray 252 (*contra*, 88 Ill. 554); to prevent the placing of *showboards* and signs on the *sidewalks* so as to obstruct them, or the carrying of placards and signs on the sidewalk for the purpose of displaying such cards, 145 Mass. 384. So a power to pass "salutary by-laws" with respect to the use of the streets, authorizes an ordinance regulating the *removal of buildings*, 4 Cush. 433. A clause authorizing the making of "all regulations which may be necessary or expedient for the preservation of the public health" authorizes an ordinance against *feeding cows on distillery slops* and selling the milk of the cows thus fed, 43 Cal. 242. So a clause allowing the adoption of any ordinance that "shall be needful to the good order of the city" authorizes one preventing the *mutilation* or destruction of ornamental *trees* planted in the streets, 37 Me. 329.

4. Under authority to pass "any other by-laws for the well-being of the city," a city may prohibit *saloons*, *restaurants*, and other places of public entertainment being kept open after *ten o'clock at night*, 38 N. H. 426; 10 Ga. 532; 28 N. H. 176; 44 N. J. L. 605; 45 N. J. L. 318; 43 Wis. 488; or may confine the *laundry business* to a certain portion of the city, 69 Cal. 149. Power "to regulate the police of the city," it may authorize the *arrest of vagrants*, 11 Mo. 61; or impose a fine upon the owner of any *animal found at large* within the city, 1 La. Ann. 385; (see 67 Ga. 753; 32 Tex. 258; 8 B. Mon. (Ky.) 433; 30 Ill. 459; 9 Allen 266; 14 Gray, 52; 21 Ill. 632.) Power to preserve peace and good order authorizes an ordinance punishing any one *rescuing a prisoner* from city officers, 32 Mo. 392; 95 Mo. 618; but power to enact ordinances for the good government of the city does not authorize *levying taxes* of any kind, not even on retail *liquor dealers*. 7 Ired. (N. C.) L. 406; 30 Ala. 461; 29 Wis. 307, S. C. 9 Am. R. 576. Power to pass such ordinances as appear to the council necessary for the security of the city, empowers it to regulate the mode of keeping and the sale of *gunpowder* within the city, 4 Ga. 509; 5 Ga. 561; or to prohibit *laundrying* in anything but a stone or brick building, 68 Cal. 294. Under the general welfare clause a city may prohibit *cruelty* to an animal, 95 Mo. 618. Power to provide for the general safety of the inhabitants empowers the council with authority to prohibit the *throwing of dangerous articles* from the upper stories of buildings into the street or public places where people pass; and even to establish *fire limits* and prevent the erection of *wooden* buildings, 1 McMul. (S. C.) L. 234; 11 Mich. 425, 2 Rowle (Pa.) 262; 12 Me. 403; 27 W. Va. 681; 98 Ill. 305; 100 Ind. 575; 117 Pa. St. 326; 12 Lea (Tenn.) 121. *Contra*, 45 Tex. 312, S. C. 23 Am. R. 608.

5. Under a power to *regulate* a calling the city may exact a *license* for the right to exercise it, 124 Ill. 359; 72 Wis. 184; 40 La. Ann. 41; but not to levy a *tax* on the gross receipts of a *foreign insurance* company, 126 Ill. 276. Power to *regulate* authorizes power to *license*, 7 Ind. 86. Under power to pass ordinances for the good rule and government of the city, it may require *elevators inside stores* to be enclosed by a railing and closed by a trap-door after business hours each day, 15 N. Y. 502. Power "to prevent disturbances and disorderly assemblages, and maintain the good government of the city," authorizes it to give a *bond for the loan of arms*. 2 Hill (N. Y.) 434; 14 La. Ann. 37. Power to prohibit or suppress practices against good morals authorizes it to punish the use of *profane language*, 43 Cal. 478. Power to preserve the peace and quiet empowers it to prohibit "all *disorderly* shouting, dancing," etc., in the streets or public places, 1 Jones (N. C.) L. 436; 98 N. C. 412; 94 N. C. 880. The city may restrain the *visiting of gambling houses*, 76 Cal. 587. Power to

pass by-laws to "improve the morals and order" of the city does not authorize it to punish the offense of keeping a *house of ill-fame*, 54 Ia. 360, S. C. 11 Cent. L. Jr. 358, 37 Am. R. 209. Power "to prevent the introduction of infectious or contagious diseases, and to preserve the health of the inhabitants," does not empower a city to prevent the import, sale or dealing in *second-hand or cast-off garments*, 80 Ala. 579. The city has no power to prevent the *renting* of property to lewd women, 54 Tex. 388. Power to pass ordinances "for the good government of the place," authorizes a city to impose a fine for an *assault and battery*, 14 Ala. 400.

6. Power to pass "in general, every other by-law or regulation that shall appear to the city council requisite and necessary for the security, welfare, and convenience of the city, or for preserving the peace, order, and good government within the same," authorizes the exacting of a *liquor license*, and to prohibit the sale if not taken out, 2 McMull. (S. C.) L. 233; 4 Strobh. (S. C.) L. 241. Power to "regulate, restrain, and suppress shops and places for the sale of ardent spirits by retail," authorizes the city to forbid the sale anywhere, 4 Denio, 341; 9 Ohio St. 290. Power to make all contracts necessary for its welfare, authorizes a city to contract for *water-works*, 28 Ga. 50; see 45 Ga. 67. Power to provide a supply of water authorizes the *exclusive grant* to a company *to supply water*, 39 N. J. Eq. 367. *Destruction of liquor under promise to pay*, when Richmond (Va.) was evacuated, city held liable, 18 Gratt. (Va.) 517; 15 Wall. 429. Under power to pass by-laws to promote the general welfare and to preserve the peace, a city may fix the time and places of holding *public markets* for the sale of food, and make such regulations as may conduce to the public interest, 33 Pa. St. 202. The power to *tax* can not be inferred from the general welfare clause, 1 O. S. 268; 7 Ired. (N. C.) L. 406.

7. "The power to make by-laws, when not expressly given, *is implied* as an incident to the very existence of a corporation; but in the case of an *express grant* of the power to enact by-laws limited to certain specified cases and for certain purposes, the corporate powers of legislation is *confined to the objects specified*, all others being excluded by implication," 33 N. H. 424, 430. "The city council is restrained to such matters, whether specifically enumerated or included under general grant, as are indifferent in themselves, such matters as are free from constitutional objection and have not been the subject of general legislation; or, as it is expressed in the charter, are not repugnant to the constitution or laws of the land," Dudley (Ga.) 30; 4 Ga. 509, 514; 2 Gr. (N. J.) 222; 11 Ia. 399. Perhaps the true rule is that the enumeration of special cases does not exclude the implied power any further than necessarily results from the nature of the special provisions, unless a different intent is apparent, 2 McMull. (S. C.) 233; 12 Me. 408; 28 N. H. 176; 38 N. H. 426; 1 Cush. 426; 18 O. 523; 9 La. Ann. 44; 66 Ind. 396; 22 Fed. Rep. 701; 85 Ind. 276; 128 Ill. 465.

8. Under this clause the city can not exact a license from pawnbrokers; but it may compel them to submit for inspection, in order to detect the stolen goods, to the police all articles pawned with them, 26 N. E. Rep. 560. An act of 1891 now permits a license, § 3232*b*.

9. All by-laws or ordinances made to regulate a trade, occupation, or certain class must fix the conditions expressly and intelligibly, and not leave them to the *caprice* of any one. They must be impartial and general, 63 Mich. 396 (S. C. 32 N. W. Rep. 72); 118 U. S. 356; 40 Ken. 173; 26 N. E. Rep. 359; 143 Mass. 598 (S. C. 10 N. E. Rep. 115); 24 Fed. Rep. 563; 117 Ind. 226; 107 Ind. 502, 509. Dill, Municp. Corp. §§ 320–322.

ARTICLE 3—TAXATION.

SEC.
3156. General and specific taxes.
3156*a*. Cities and towns are not subject to general road law.
3157. Equalization — Fixing rate — Refunding.
3158. Sinking fund tax.
3158*a*. Temporary investment of specific municipal funds.
3159. Temporary loans.
3160. State tax law governs.
3160*a*. Time of paying city taxes.

[1873, p. 57. Approved and in force March 7, 1873.]

SEC. 3156. General and specific taxes. 58. The common council shall have power to levy, and cause to be assessed and collected, in each year, an *ad valorem* tax of not more than one per cent. for general purposes, on all property subject to state and county taxation within such city, and also upon the stocks of all free banks, insurance companies, and other joint-stock companies doing business within such city; the said tax to be assessed and levied upon the stock of each individual shareholder of said companies and banks, whether such shareholder reside within such city or elsewhere. The cities and incorporated towns through or into which a railroad may pass may assess any railroad building, fixtures, and machinery connected therewith, within the city or town limits, on the same basis and the same manner that the like property of natural persons is assessed, and collect the taxes thereon as other taxes are collected; but the rolling-machinery used in operating the road shall be deemed to be embodied in the taxes by the mile. And also a specific tax on omnibuses, or any carriages and other vehicles used and run for passengers for hire, unless the same be licensed; and on each dog owned by any resident of such city of not more than two dollars, and on any bitch owned by any resident of such city of not more than five dollars; and also a poll-tax not exceeding fifty cents on every male inhabitant, sane and not a pauper, of the age of twenty-one years and not exceeding fifty years, residing therein: *Provided*, That any incorporated city having a population exceeding twenty thousand shall have power to levy, and cause to be assessed and collected, in each year, an *ad valorem* tax of not more than one and one-half per cent. for general purposes on all property within such city returned for taxation by the city assessor, and upon stocks of incorporations as before provided. There may also be levied and collected, annually, an additional tax to pay the whole interest of the public debt due from said city.

1. Special levies: To pay *public aid bonds*, § 3152; *water-works bonds*, § 3283; *school bonds*, § 4490; special tax to buy *school supplies* and erect *school buildings*, § 4467; *local tuition tax*, § 4469, see also § 3126.

2. City *clerk's* duty with reference to *tax duplicate*, § 3070; *treasurer's* duties, §§ 3079 to 3094. The office of city assessor has been abolished, § 3160.

3. In making assessments and collection of taxes the city is now governed by the general tax law, §§ 3160, 3263, 3264.

4. *Bank stock*, see § 3254, *notes*.

5. The section of the constitution (R. S. 1881, § 193) with respect to a uniform and equal rate of taxation, has no reference to cities and towns, 48 Ind. 568.

6. The tax is limited in small cities to *one per cent.* only for *general purposes*, 79 Ind. p. 353; 55 Ind. 210; 22 Ind. 262.

7. The city has absolute *power to tax all property* within its limits; and this grant of power by the legislature is constitutional, 59 Ind. 225; 22 Ind. 262; 55 Ind. 210; 79 Ind. p. 353. It may tax property recently annexed to pay a debt created previous to the annexation, 81 Ind. 582. The property of non-residents within the city is there taxable, 21 Ind. 335 (park). Unless a statute exempts *agricultural land* lying within the city, it is liable the same as platted territory, 59 Ind. 225. The legislature has full power to *exempt* certain property, and to *limit* the power of the city to tax, 40 Ind. 491; 11 Ind. 139; 7 B. 495; 3 Ind. 43; 17 Ind. 48; 27 Ind. 332. *Exemptions* are *construed strictly*, 18 Ind. 33. Choses in action held by an executor living within a city of any size, where the decedent resided outside the city limits at the date of his death can not be taxed by the city, 83 Ind. 211.

8. The assessment of property *illegally annexed* to a city may be enjoined, 55 Ind. 576; 72 Ind. 161. In such an instance it must be shown that the tax duplicate is in the hands of the city treasurer and he is threatening or proceeding to collect the tax, 72 Ind. 161. If the taxes are paid under coercion they may be recovered back; and a wife is not estopped to recover them back because of the fact that her husband listed the land without her knowledge, 112 Ind. 344.

9. *Bonds of the United States* can not be taxed by the city, 23 Ind. 331; 33 Ind. 338.

10. A tax may be levied on the *capital stock* of a corporation, at its actual value, held by any resident of the State, 23 Ind. 331; 15 Ind. 150; even though such corporation is a foreign railroad company, 79 Ind. 351; 14 Ind. 27.

11. The city can not fix the value of *railroad property* within its limits; that is done by the state board of equalization; and when the value is affixed, then the city may assess it at that valuation, 108 Ind. 144, 153, § 6410.

12. Under this section the common council may levy and enforce a *special tax* to pay the whole interest, whether overdue or not, on the public railroad debt of a city, 59 Ind. 400.

13. When an owner of property already *assessed*, *elsewhere*, for state and county purposes, moved, with such property, into a city prior to June 1st of the same year, the property is liable for city taxes also, 55 Ind. 210.

14. A city or town may require that all *dogs* be kept up, to prevent the spread of hydrophobia, and authorize the marshal to kill them if they are not, 27 Ind. 494. A tax on dogs is valid, 27 Ind. 62, 120; 79 Ind. 12.

[1883, p. 62. Approved and in force March 2, 1883.]

SEC. 3156*a*. Cities and towns not subject to general road law. 38. Residents of towns and cities, subject to road work, shall not be subject to the provisions of this act, except that the respective boards of trustees of towns, and the common councils of cities, may require them to work within the corporate limits of their respective towns and cities; and tax levies to be made under the provisions of this act, by township trustees, shall not apply to or affect any property within the corporate limits of any city or town; and any tax levy to be made under this act, by the board of town trustees, shall not apply to any property outside of such towns. This act shall not affect any existing law which authorizes cities and towns to raise money, and make application thereof upon the streets and and alleys thereof; and cities and towns shall have the same power and authority over its streets and alleys as if this act had not been passed. [El. Sup. § 1580.]

No person who served in the Union army or navy during the war of the rebellion, and who was honorably discharged therefrom, shall be required to labor on the public highways of this State. [Approved and in force March 4, 1891. Acts 1891, p. 78.]

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3157. Equalization — Fixing rate — Refunding. 59. The common council, together with the clerk and assessor, shall constitute the board of equalization of such city; and shall, within one month after the assessment-roll has been returned, at a stated meeting thereof (of which at least two weeks' notice shall be given), hear and decide all complaints in relation thereto, and shall equalize the same as right and justice may require, and shall have the power to equalize the valuations made by such assessor, either by adding to or deducting from any valuation made as aforesaid, such sum as to them, or a majority of them, may appear just and equitable. The common council shall have power to refer the assessment-lists and all complaints in regard to any assessment to a committee of said council; which committee shall sit from day to day, and examine such lists and hear and determine such complaints, and shall make report thereon to the common council within ten days after the meeting of the board of equalization before mentioned; which report shall be accompanied by a statement of the total amount of the taxables returned by the assessor. The common council shall then proceed to fix the amount and rate of tax to be levied on property and polls within such city; and the clerk shall have power, at any time, to correct erroneous assessments that shall be proven and made apparent to him; and the common council may, at any time, order the amount erroneously assessed against and collected from any tax-payer to be refunded to him.

1. All levies of taxes and incorporation of cities prior to March 14, 1867, were *legalized* by § 95 of this act.

2. Appraisements by assessors in cities incorporated under the act of March 9, 1857, made prior to March 3, 1859, are legalized by the acts of 1859 (p. 56); and assessments, levies, and collections of city taxes for the years 1873 and 1874 were legalized by an act of 1875 (p. 148); and for subsequent years, up to and including the taxes levied in 1880, they were legalized by an act of 1881 (S., p. 697.)

3. The clerk is now governed by § 6416 in correcting erroneous assessments or listing omitted property

4. The city board of equalization has been abolished, § 3160. The city adopts the township or county appraisement. It can neither add to nor take away from that appraisement which is the basis for taxation. And this is true, even though the appraisement has been certified to the city clerk before the county board of review has met. Perhaps the council may, in such a case, adopt the appraisement as afterwards equalized by the county board, 62 Ind. 421.

5. The duty to *refund taxes* erroneously assessed is mandatory, 86 Ind. 587, 111 Ind. 247; even though the tax-payer was negligent in failing to use the means of knowledge he had to ascertain if they had been erroneously assessed, 86 Ind. 587. Tax on bank stock erroneously assessed may be recovered back, 111 Ind. 247. The city is not liable to refund money paid at a tax sale because the purchaser failed to acquire title to or a lien upon the land sold for city taxes; unless the land was not liable for city taxation, or the taxes had been paid be-

fore the sale, 98 Ind. 182; 84 Ind. 467; 29 Ind. 486. The fact that the assessment was made by the wrong officer is not enough to secure a refunding, 98 Ind. 279. A judgment of a court refusing to enforce the purchaser's lien against the land sold does not conclude the city, nor alone render the city liable to refund the taxes, 98 Ind. 182.

6. An *injunction* will not be granted to restrain the collection of illegal taxes if any part of them are valid, 81 Ind. 582; 84 Ind. 108. The complaint for the injunction must show that the taxes have been placed upon the tax duplicate and that it is in the hands of the treasurer for collection, 82 Ind. 493. Mere irregularities is not enough, 77 Ind. 371. Real estate can not be sold so long as there is personal property of the owner liable to be sold, 95 Ind. 156.

7. The tax levy can not be made until after the county board of review has acted, 82 Ind. 493. (See 14 Ind. 306, as to time within which levy must be made under an old statute.)

8. An ordinance passed levying a tax after the limit allowed by law has been reached by a previous ordinance is void, 40 Oh. St. 56; 4 Oh. St. 670. So is an ordinance levying an amount which exceeds such limit both as to the amount within and without the limit, 41 Oh. St. 670; 40 Oh. St. 56.

Tax Levy.

SEC. 1. Be it ordained by the common council of the city of ——— that there is hereby levied the following amounts for the year 18— on each hundred dollars of the assessed value of the property of this city, as returned for taxation by the township assessor and equalized by the board of review, for the objects named, viz.:

For general purposes	$1 00
For water-works bonds	10
For railroad aid bonds	04
For sinking fund	03
For school-house bonds	02
For special school fund	20
For local school tuition fund	07

SEC. 2. That on each male dog owned or harbored by any resident of the city there shall be levied the sum of $1.50; and on any bitch owned or harbored by any resident of the city, the sum of $5.00. There shall also be levied a poll tax of fifty cents on every male inhabitant of the city, sane and not a pauper, of the age of twenty-one years and not exceeding fifty years, residing therein.

SEC. 3. This ordinance shall be in force from and after its passage.

[See § 3160*a* for resolution on payment in installments.]

SEC. 3158. Sinking fund tax. 82. For the purpose of creating a sinking fund for the gradual extinguishment of the bonds and funded debt of any city coming under this act of incorporation, the common council thereof shall, annually, levy and collect, in addition to other taxes herein provided, not less than half a mill on the dollar upon the taxable property in such city; which shall be paid into the treasury and applied, by direction of the common council, to the extinguishment of the bonds and debts aforesaid, and to no other purpose whatever.

See § 3156, *note* 1.

[1883, p. 101. Approved March 5, 1883, and in force June 5, 1883.]

SEC. 3158*a*. Temporary investment of specific municipal funds. 1. Municipal corporations of this State shall have the power and

authority to temporarily invest their sinking fund, or any other specific fund held for any purposes whatever, in the bonds of the government of the United States, the State of Indiana, or any of the counties of Indiana, during such time as the said sinking funds can not be advantageously used in taking up or paying off the city's bonds or indebtedness, or said other specific fund can not be or is not used for the purpose for which it is intended. [El. Sup. § 802.]

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3159. Temporary loans. 83. Loans may be made by a vote of two-thirds of the common council, in anticipation of the revenue of the current and following year, and payable within that period; but the aggregate amount of such loan in any fiscal year shall not exceed the levy and tax authorized by this act for municipal expenses for the same year.

1. See § 220, *notes*, on limitation of debt. Temporary investment in street bonds, see § 3292*h*. If an individual is appointed agent by the council to procure a loan by the sale of city bonds, he can not set up the illegality of the appointment after he has procured the money by sale of the bonds, 17 Ind. 628.

2. The purchase of real estate by a city on a credit of ten years is not a loan within the meaning of this section. In such an instance the city gets no money by loan or otherwise, but it gets the property purchased, and agrees to pay for it, 78 Ind. 192.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 3160. State tax law governs. 259. Cities shall be governed by the provisions of this law in regard to the matters embraced therein, so far as the same are applicable; and the duties required by the terms of this act to be done by the county officers shall be performed by the corresponding officers of each city, in regard to the listing and valuation of property and the assessment and collection of taxes, and all matters pertaining thereto: *Provided*, That all city taxes shall be paid on or before the third Monday in April in each year; unless the common council shall, by ordinance or resolution, determine otherwise, as provided by law: *And provided, further*, That the office of city assessor and the city board of equalization are hereby abolished and the assessment of real and personal property, as made and returned by the township assessor, shall serve as the assessment for city purposes, and the proper city officers shall have access to the assessor's books and to the tax duplicates in the county auditor's office, for the purpose of transcribing therefrom a list of the property assessed as the same shall have been equalized by the board of review and the state tax board of tax commissioners.

1. See § 6521*a*. A very similar provision was adopted on the 16th day of April, 1881, § 3263, not applicable, however, to cities having special charters. In nearly every other respect the acts are identical in applying the general tax law to cities. The inference to be drawn from these two acts is that cities acting under special charters are not governed by the general tax law. So far as the tax sale is concerned, the city of Evansville is now governed by the general tax law, acts 1889, p. 343; El. Sup. § 788.

2. Under this section, and in fact under § 3263, wherever the provisions of the general state tax law are applicable, the city tax law is repealed, leaving only such provisions of it standing as upon which there are no provisions in the general tax law.

3. So far as the *time of payment* is concerned, the city by resolution may direct that the tax be paid in semi-annual installments; but a resolution is necessary to authorize the collection in that manner, § 3160*a*.

4. A purchaser at a *city tax sale* is entitled to the same *penalty* on the amount he pays as if the sale was by the county for state and county taxes, 85 Ind. 481. *The lien of city taxes* is of equal rank and priority to taxes levied for state and county purposes. A purchaser at a tax sale made by the county officers takes the land subject to the lien for city taxes existing thereon, if the land is of sufficient value to pay all taxes, but if the land is not of sufficient value to pay all taxes, then the sale first rightfully made will divest the lien for the other taxes, 101 Ind. 326; 121 Ind. 180; 104 Ind. 498, 502. But when suit is brought by the State to foreclose its lien for taxes, a city or town tax is subordinate. See § 6491.

5. The city can not now nor could it formerly appraise railroad property. See § 3156, note 11. See 22 Ind. 262.

[1883, p. 30. Approved February 27, 1883, and in force June 5, 1883.]

SEC. 3160*a*. Paying city taxes in installments. 1. Any city in this State by a provision contained in the ordinance or resolution fixing the tax levy for any year may allow the taxes so levied for general city purposes to be paid in equal semi-annual installments, the first half to be paid on or before the third Monday in April, and the second half on or before the first Monday in November: *Provided*, That in all cases where the first installment shall not be paid on or before the third Monday in April, the whole amount unpaid shall become due and be returned delinquent, and collected as provided by law; and there shall be a penalty added of ten per cent. upon the amount of any installment not paid when due, which the persons or property assessed shall pay, together with cost of collection, and if such taxes remain delinquent at the succeeding first Monday in November, there shall be a penalty of six per centum added to all such taxes that became delinquent at the preceding April and November settlements, and a penalty of ten per centum only shall be added to the current delinquency occurring on the first Monday in November. All poll or special taxes shall be paid at the same time, on or before the third Monday in April. In all cities which do not adopt and accept the provisions hereof taxes shall be paid and collected as now provided by law. [El. Sup. § 746.]

1. When the county treasurer collects city taxes they are paid in installments, § 3225*a*.

2. Payment in two installments can only be authorized when the general tax levy is made for the year; and then only in the ordinance making the levy.

Resolution.

All taxes hereby levied for the year 18—, may be paid in equal semi-annual installments, the first half to be paid on or before the third Monday in April, 18—, and the second half on or before the first Monday in November of

the same year, except all poll and all the special taxes, to wit: [*Specifying them*], which shall be paid on or before said third Monday of April.

[The above should be incorporated in the ordinance making the general annual levy.]

ARTICLE 4—IMPROVEMENT OF STREETS.

SEC.
3161. Power over streets.
3161*a*. County commissioners—Bridges within in city.
3161*b*. Street grade for railroads.
3162. Petition for street improvements.
3163. Cost, how apportioned.
3164. Payment—Lien—Order without petition.
3165. Payment, how enforced.
3165*a*. Payment, how enforced on unplatted land.

[1891, p. 122. Approved and in force March 6, 1891.]

SEC. 3161. Power over streets. 61. The common council shall have exclusive power over the streets, highways, alleys, and bridges within such city, and may prescribe the height and manner and construction of all such bridges, and to lay out surveys, extend and open new streets and alleys, and straighten, widen and otherwise alter those already laid out, and to make repairs thereto, to construct and establish sidewalks and crossings; they may cause buildings, structures or other things in the way of any street or other public improvement to be taken down, removed and appropriated upon the payment of damages as now provided by law; they may enter upon, seize, appropriate, and condemn the right of way, or other lands of any railroad company, person, or corporation passing through such city for street or alley purposes, whether such lands be occupied and used or not, upon payment of damages as provided under and pursuant to the provisions of an act entitled "An act in relation to the laying out, opening, widening, altering, and vacation of streets, alleys, and highways, and for the straightening or altering of water courses by cities of this State, and providing for the appointment of commissioners to assess benefits and damages, prescribing their duties and the method of procedure, and providing for the collection of benefits and payment of damages, and prescribing the duties of city officers in relation thereto, and providing remedies in such matters," approved March 17, 1875, and the amendments thereto. And no person residing in said city shall be required or compelled to work on any road without the city; nor shall any property lying or being within the city be taxed for the purpose of working, opening, improving or repairing any road or bridge within the limits of said city; and the common council may exercise all powers of township trustees, and the street commissioner, under the direction of the common council, may perform all the duties and exercise all the powers of township trustees and road supervisors in reference to a road labor tax of two days by each person liable to work on roads in townships, and shall be governed by the same rules and regulations in reference to the collection and enforcement of the same; or any person so liable to work may be

discharged therefrom on the payment of one dollar and fifty cents per diem: *Provided*, That the common council may, by general ordinance, prescribe the time within which such labor shall be performed.

STEPS OF PROCEDURE.

The essential steps in a street improvement are as follows:

1. *Title to the street.* The city must have the title to the street before it can proceed.

2. *Establishment of grade.* The grade should be established by the city civil engineer, § 3073. To establish a grade for a street is an incidental power of the right to improve it.

3. *Petition for improvement.* It is not essential if two-thirds of the members of the council order the improvement, § 3164. If not ordered by a two-thirds vote, then a petition must be presented to the common council, and then a majority vote is sufficient, § 3162.

4. *Plans.* Plans should then be prepared by the city civil engineer, and kept on file in his office.

5. *Resolution for improvement.* The resolution should designate the street or sidewalk, between what two points the improvement is to be made, and if a sidewalk, which side of the street; the kind of improvement; either embody the plans of the city civil engineer, or adopt them by reference. It should contain a direction for advertising, in a designated paper for bids, to be opened at a designated meeting of the council, § 3162.

6. *Resolution to contract.* Contract must be let to lowest and best bidder who performs the condition of the advertisement.

7. *Execution of contract.* By person authorized to do so on the part of the city, and the bidder. May be executed in duplicate; one to be kept on file in the clerk's office, and the other given to the contractor. The advertisement, a written bid and its acceptance put on record may constitute the contract.

8. *Estimates.* These may be made by the engineer as the work progresses, and be reported to the council and be allowed, and collected, § 3164, § 3165, § 3165*a*. When the work is completed, the engineer makes a final estimate, which the council allows and orders paid, § 3163, § 3164. There can be no estimate, however, for *unplatted* land, until the work is completed, § 3165*a*.

9. *Demand of payment.* The clerk issues to the contractor a certificate of the allowance, usually, and he makes a demand of the person named therein whose lands have been assessed; but this is really not necessary, for the owner is bound to take notice of the estimate and pay it.

10. *Precept.* In the case of *platted* ground, if the estimate is not paid within twenty days, the contractor files an affidavit with the clerk for a precept, who lays it before the council and that body orders a precept. The mayor signs and the clerk attests the precept, and delivers it to the treasurer, § 3165.

11. *Collection from platted ground.* Within ten days after its receipt the treasurer serves the precept on the lot-owner assessed and demands payment; if he can not be found, then he publishes a three-weeks' notice in a weekly newspaper of the city, demanding payment within twenty days after the date of the last publication. At the expiration of ten days after said twenty days, the treasurer levies the precept on the lot assessed, and advertises it three weeks in a weekly newspaper for sale. The sale is for cash; but if the contractor purchases the lot, he pays in cash only the amount bid in excess of his claim, exclusive of costs. The sale is without relief from appraisement laws, § 3165.

12. *Appeal.* An appeal may be taken by the land-owner to the circuit court, at any time within twenty days after demand or publication on precept; in which event all proceedings by the city are stopped, and thenceforth are carried on in the circuit court, and unless the appeal is dismissed, the sale takes place under a decree of the court, by the sheriff.

13. *Collection from unplatted land.* If the owner of *unplatted* lands fails to pay for a period of sixty days after the work is completed and the final estimate made and approved, the contractor must proceed in the circuit court of the county to collect the amount due. He can not proceed by precept. The sale is without relief from valuation or appraisement laws.

14. *Certificate of sale.* Upon a sale on precept, the treasurer issues a certificate of sale to the purchaser, § 3165; and upon a sale on a decree of the circuit court, the sheriff.

15. *Redemption.* Upon a sale in either method, the owner of the lot or land may redeem therefrom within a year, § 3165, § 3165*a*.

16. *Deed.* When the sale is on precept, the city treasurer issues the deed, § 3165, if under decree of court, the sheriff, § 3165*a*.

17. *Title.* If all the proceedings are regular, the grantee under the deed gets a valid title, free from all liens except such as the city or county holds, § 3165. It is subject to a school fund mortgage.

NOTES AND FORMS.

1. For a *change of grade* and liability, see § 3073, *notes 7 and* 8; *sewers*, § 3106, clause 43; for Barrett Law, § 3292*a*; for *establishment of grade*, § 3073, *notes* 4 *to* 6; for liability for *consequential damages*, § 3073, *note* 1. Working out *road tax*, §§ 3156, 3156*a*. *Removal of obstructions*, § 3106, clause 18. *Regulating bridges* and culverts, § 3106, clause 40. *National road* is a street in Indianapolis, 2 Ind. 147; 29 Ind. 329. *Turnpikes within* a city, see § 3106, clause 18, *note* 7. *Railroad*, § 3224*e*. This statute is *constitutional*, and confers *plenary power*, 6 Ind. 237; 23 Ind. 381. Ordering an improvement is a *judicial act*, for which the city is *not liable;* but it may be liable if the work is constructed negligently, 25 Ind. 512; 26 Ind. 17; 36 Ind. 90; 100 Ind. 210.

2. The power to change a grade or order an improvement is *not exhausted* by the fact that the grade has once been changed on the street previously improved; the *power* is a *continuing* one, 17 Ind. 267; 34 Ind. 140; 24 Mich. 322; 7 Bull. 79; 11 Bull. 145.

3. City property is *liable* for assessments for *free gravel roads*, 104 Ind. 195.

4. This section does not authorize the improvement of a *market-house* at the expense of adjacent property holders, 106 Ind. 66. A city has *no power* to make assessments on adjoining property, except as *authorized* by its *charter*, from which no substantial departure can be made, 110 Ind. 259.

5. *Streets and alleys are highways*, 48 Ind. 178; 1 B. 43, 48; 4 B. 234; 7 Ind. 9; 21 Ind. 277; but every highway is not a street, 7 Ind. 9; 31 Ind. 356. A *sidewalk* is a part of the street, 73 Ind. 185; 100 Ind. 242. See § 3162, *note* 33.

6. The right to *use* and enjoy a street is an appurtenance to a lot abutting upon it, and an injury to such an appurtenance is an injury to the lot, 9 Ind. 467; 16 Ind. 441. The owner is entitled to have the street open to its full width; and without proof of special, is entitled to nominal damages, 7 Ind. 9, 38, 479. But he must show that the additional burden on the easement caused an injury, 122 Ind. 344. If an abutting land-owner consented that a railroad might occupy a street, he can not enjoin it from so doing nor recover damages therefor, 122 Ind. 344.

7. The city can not authorize a *railroad* company to lay its *track* in the street or in an alley without paying the abutting lot-owner all damages he thereby may sustain, 9 Ind. 467; 48 Ind. 178 (*contra*, 13 Ind. 353); 49 Ind. 296; 50 Ind. 127; 37 Ind. 489; 74 Ind. 29; 122 Ind. 344; 123 Ind. 136; 26 N. E. Rep. 759. See § 3224*e*; 125 Ind. 476, 412. Not even the legislature can authorize such use, 7 Ind. 38, 479; 49 Ind. 296. It is otherwise where the city owns the fee of the street, 41 Ind. 364; but in this State the abutting lot-owner owns to the center of the street, 48 Ind. 178; 9 Ind. 467. A city or town in granting the right to a railroad to occupy a street exercises a power delegated to it by the sovereign, and is not liable for exercising such power, 122 Ind. 344. But if an

abutting lot-owner stand by and let the company build its road-bed and lay its track in the street, he can not then enjoin nor eject the company, although he may recover whatever damages he has sustained, 125 Ind. 476, 509, 412; 113 Ind. 124, 233. If the company has assessed and paid damages to the abutting lot-owner, it may lay *more than one track* in the street, so long as the access to the abutting property is not entirely thereby cut off, 26 N. E. Rep. 759. The city may, however, grant permission to a railroad company to lay its track in the street; and such railroad must then procure the consent of the abutting lot-owner, or have his damages assessed and paid. But the city can not authorize the railroad to obstruct the street, 108 Ind. 113; 37 Ind. 489; 7 Ind. 479. The city may grant permission to a railroad company to occupy the street on condition that it will fill it up and improve it; and if the company does not fill and improve the street in accordance with the terms of the condition, the city may do so and recover of it the cost of such improvement, 34 Ind. 304. But a *street railway* granted the privilege by the city (§ 4143) is not an additional burden on the easement, 78 Ind. 261.

8. The city has such a qualified possession that it can not maintain an action *quare clausum fregit* for an injury thereto, 1 B. 87.

9. The city can not *divert the use* of a street to private purposes, 73 Ind. 185; 7 Ind. 38; 56 Ind. 139; nor surrender the street to a mere licensee, 79 Ind. 446. It can not authorize the placing of a huckster's stand, of a permanent character, in the street, 73 Ind. 185. See § 3106, clause 18, *notes*.

10. The right of the city to control the street not only extends over its surface, but extends up indefinitely, and it may cause the removal of *overhanging obstructions*, such as cornices of buildings, 45 Ind. 429; 36 Ind. 522. See 29 Cent. L. Jr. 428. A city must own ground for street purposes before it can legally enter upon it to improve, 11 Oh. St. 227; but it may obtain *title* pending proceedings, 9 Rec. 727.

DEDICATION AND ADVERSE USER.

11. The execution and recording of a plat amounts to a *dedication* of the streets and alleys to public use, 55 Ind. 240; 16 Ind. 451; 8 Ind. 378; 15 Ind. 201; 1 B. 43; 4 B. 234; 37 Ind. 229. Commissioners in partition may make the dedication, 101 Ind. 200. And where a street was used and occupied by a canal for a long time, and then abandoned it, it was held that the person executing the plat was not entitled to such street, 55 Ind. 240. The dedication of a street may be proved by the recorded plat, together with public user, by sale of adjoining lots by the proprietor, by proof of parol dedication accompanied by public user, by proof of a taking by lawful authority for the use of the public, or by proof of acts of the owner evidencing dedication, such as selling lots on opposite sides of a strip of land suitable for a street and standing by and seeing the public use it as such, 15 Ind. 201; 16 Ind. 362; 8 Ind. 378; 123 Ind. 136, 196. The original owner can not *revoke a dedication*, 7 Ind. 38. A dedication may be *proved by parol* evidence, 7 Ind. 641; 2 Ind. 420; 2 B. 290; 101 Ind. 200; 123 Ind. 136, 196. But where the intent is expressed and evidenced by a recorded plat, the intent as expressed in such plat can not be contradicted by parol, 123 Ind. 196. Whether the plat contains an express dedication of a strip to the public as a street, is a *matter of law* for the court, 123 Ind. 196. A dedication of a street is a dedication to the public, and not to the city or town, 123 Ind. 196. If the owner of land plat it, and record the plat or sell lots with reference thereto, and upon the plat he designates certain portions as streets and alleys, declaring in unequivocal language that he donates the fee-simple of such streets and alleys to the public, the fee thereof vests in the public; but if he merely designates certain portions as streets and alleys the fee remains in the owners of the abutting lots, 48 Ind. 74; 101 Ind. 200; 123 Ind. 136, 196. A private way can not be changed into a public way, however long it may be used by the public, without his consent, 101 Ind. 200. Dedication may be implied as against a married woman, 101 Ind. 200.

12. In order to show a *dedication* of ground for a street, alley, or public place, an *intent* to dedicate is essential, 8 Ind. 174, 378; 12 Ind. 620; 37 Ind.

320; 60 Ind. 620; 101 Ind. 201; 123 Ind. 136; 26 N. E. Rep. 676. Whether or not the owner intended to dedicate the ground for a street must be determined by his acts and statements explaining his conduct, in connection with all the circumstances throwing light upon the subject, and not from what he may subsequently testify as to his real intentions in relation to the matter, 36 Ind. 330. A clear intention to devote the ground claimed to a public use must be shown, in order to make it a dedication, 12 Ind. 620; 66 Ind. 177; 123 Ind. 136, 196; but that intent may be implied from his acts, 16 Ind. 362; or his acts may be shown to rebut any implied intent, 101 Ind. 200; 76 Ind. 244; but not what he may say after the dedication is complete, 123 Ind. 136. In a complaint for an injunction to prevent a city from using a strip of land as a street, it must not only show that the strip was not granted or condemned for a street, but that there was no implied dedication, 91 Ind. 493.

13. The *user* by the public to make a dedication must have been a user adverse and exclusive of the use and enjoyment by the proprietor, and not a mere use by the public under and in connection with its use by the owner in any manner desired by him, 30 Ind. 389. By permitting the way to be used as a public highway, and standing by and seeing improvements put up with reference thereto, the owner may estop himself to claim it as his own private ground, 51 Ind. 201; 42 Ind. 276; 15 Ind. 226; 52 Ind. 309; 8 Ind. 425; 78 Ind. 90; 37 Ind. 229; 25 Ind. 352; 66 Ind. 177; 99 Ind. 53; 96 Ind. 31; 107 Ind. 591. § 5035 of R. S. 1881 is not applicable to a city or town, 103 Ind. 349. User for *twenty years* with the knowledge and consent of the owner is a good dedication; or for such a length of time that public accommodation and private rights might be materially affected by the interruption or enjoyment, thereby raising a *presumption of* dedication by the owner. User, however, for a considerable time, even with the knowledge of the owner, does not create a presumption of dedication, unless the use is with his consent. A presumption of dedication arising merely from presumption may be rebutted, 109 Ind. 366; 78 Ind. 90; 76 Ind. p. 254. See 15 Ind. 226; 10 Ind. 219; 25 Ind. 352; 51 Ind. 201; 52 Ind. 309; 60 Ind. 364; 66 Ind. 177. Mere acquiescence, however long, in the public's using a road across a vacant lot will not amount of itself to a dedication, 103 Ind. 349. The uses must be adverse to and not by the permission of the owner, 110 Ind. 509. The public may even acquire a right of way across land set out for a public square, 91 Ind. 333. Even though a way terminate on private property, it may become a public highway by dedication, 89 Ind. 298. If the user is interrupted, it must begin again anew, 110 Ind. 509.

14. So far as the proprietor of the land and the city is concerned, a dedication may be completed without any act of *acceptance* by the public; but in order to make the city liable to repair the highway, there must be such an acceptance. This acceptance must be by the proper or authorized public authorities. Such acceptance may be express and of record, or implied from repairs made and ordered or knowingly paid for by authority which has the legal power to adopt the street, or from long user by the public, 16 Ind. 441, 451; 78 Ind. 90. Public work upon a road is not necessary to make the dedication complete, 86 Ind. 53.

15. The right of the public to a street can not be taken away by *adverse occupation or user* by a private individual; 79 Ind. 446; 92 Ind. 107; 56 Ind. 139; 46 Ind. 15; but a city may *abandon* a street, alley, or public place, although mere permissive possession of a part of a street for the statutory period of limitation will not confer title, 79 Ind. 446; 25 Ind. 531. But adverse possession of a part of a street during the time the dedication is running may prevent a dedication of the part occupied, 26 N. E. Rep. 676. Yet where the lines of a street have been practically established by the occupancy and improvement of lots bordering upon it, and the city authorities have recognized the correctness of the lines so established by permitting the owners to so occupy and improve their property, and have acquiesced in it for a considerable length of time, and to such an extent that to change the lines would work great wrong to the owners, and disturb long established lines and possession, the city will be estopped from disturbing the lines so practically established, although an accurate survey shows that they were wrong according to the plat, and that the lots as occupied extend into the street as originally established, 46 Ind. 15. One who *donates* a portion of his *land* for use as a way of travel *for his own convenience and ac-*

commodation, will not be deemed to have dedicated it to the public simply because the public also use the way with the land-owner's permission. Such an instance is *land around a railroad depot.* Thus a railroad proposed to dedicate a strip of land to the public for a street, if the city council would vacate a certain alley. The city rejected the offer of exchange by failing to act thereon, but assessed the benefits to the company growing out of the vacation of the alley at a certain sum, which sum was paid by the company, and the company curbed and paved the strip it proposed to donate, so that the public could obtain ingress and egress to its depot. It was held that the strip offered to the city was not dedicated to the public, but was the property of the company, 125 Ind. 26; 30 Ind. 389 (land abutting on a navigable river is not dedicated by use).

Additional Note.

16. *Common law dedication* to be valid requires an intention to and an actual dedication on the part of the owner, and an acceptance by the public, all of which may be established by the acts of the parties and the surrounding circumstances, 8 O. S. 440.

17. *Intention of the owner* may be shown by a defective dedication under the statute, 8 O. S. 440; 1 Disney, 401; 3 O. C. C. 313. Acquiescence by the owner in the use of a public road across land for less than twenty-one years is evidence tending to prove a dedication, 11 O. S. 274. Acceptance of lots laid out in a subdivision in partition, in which streets are declared by commissioners to be dedicated, may estop the parties from denying the dedication, 19 O. S. 238; 3 O. C. C. 313. Dedication of a strip of land for a street on condition that an adjoining owner will dedicate a like strip, together with user by the public for eighteen years, will perfect the dedication, although the adjoining owner never dedicates his part, 1 C. S. C. R. 228; and where an owner dedicates a street on condition that he shall be exempt from charges for improvement, the dedication takes effect, but the condition does not, 31 O. S. 506. *Acceptance by the public* may be shown by long user, 1 Disney, 401; 1 C. S. C. R. 228; 3 O. C. C. 313; or by the public authorities recognizing a street by name and ordering its improvement, 19 O. S. 238; or by entering into a contract with a railroad, providing for its improvement, 36 O. S. 631; or by establishing a street railroad route over it, under circumstances which estop the owner of the land from disclaiming the existence of a street, 17 Bull. 265. But use, by the corporation, of land which it owns in fee for forty years for a specific purpose, will not constitute a dedication thereof for that purpose, 18 O. S. 563.

DUTY TO KEEP IN REPAIR.

18. The plenary and exclusive power over streets carries with it a corresponding *duty* to keep the streets in *repair;* and if any one is *injured*, without neglect contributing to the injury, by reason of a defect in a street, which it was the duty of the city to repair, such city will be *liable in damages* to the person injured, 55 Ind. 250; 57 Ind. 192; 43 Ind. 474; 11 Ind. 5; 70 Ind. 65; 74 Ind. 520; 71 Ind. 5; 45 Ind. 429; 83 Ind. 76, 271; 77 Ind. 29; 100 Ind. 396. The city owes to the public the duty to keep them in a safe condition for use in the usual mode by travelers, and are liable in a civil action for special injuries resulting from a neglect to perform its duty. And this is even true of a street that has never been improved, 83 Ind. 76, 261; or where a horse, without fault of his driver, takes fright and *runs away*, and the driver is injured by reason of a defect in the street, 79 Ind. 308. The city must not only keep the streets in a fit condition for travel in the *day-time*, but also for travel in the *night-time*, 76 Ind. 498; 112 Ind. 451; 124 Ind. 79 (running to a fire); 125 Ind. 522. Yet the fact that a pavement is uneven, or the bricks have been displaced by the action of the elements, does not necessarily render the city liable, if the defect could be readily discovered and easily avoided by the person exercising due care, or if the defect be of such a nature as not of itself to be dangerous to persons so using the walk, 112 Ind. 133; 106 Ind. 305 (plank three inches high); 99 Ind. 10 (box one inch high). So even a *blind person* may recover damages for injuries sustained by reason of defects, 76 Ind. 291; 26 N. E. Rep. 882.

19. So the city is liable even if the *defect* was *caused* by the act or omission of a *third party*, of which the city had actual or constructive notice, 77 Ind. 29; 43 Ind. 574; 100 Ind. 396; 45 Ind. 429; 47 Ind. 391; 66 Ind. 136. So the city is liable if the defect was caused by the act of its officer, 102 Ind. 375; 92 Ind. 213; 86 Ind. 323; and is even liable to its *own officers and servants*, 96 Ind. 51. Any one placing an *obstruction* in a street or rendering it defective, is liable to the city for the amount of damages the injured person is entitled to and recovers of it, 107 Ind. 475; not what he does recover, but both what he is entitled to and does recover, unless the city serves upon such person notice of the pendency of the action when brought and requests him to assist or take charge of the defense, in which event such person will be liable even to the city in the full amount of damages and costs, regardless of the extent of the plaintiff's injuries, 85 Ind. 384; 87 Ind. 77; 57 Ind. 192; 79 Ind. 547; 85 Ind. 384; 2 Black (U. S.) 418; 4 Wall. 657; 4 Cush. 275, 277; 49 N. Y. 657; 72 N. Y. 65; 47 N. Y. 475; 9 Allen, 17; 10 Gray, 496; 109 Mass. 283; 101 Mass, 103; 102 Mass. 341; 122 Mass. 100; 34 N. H. 179; 30 Conn. 535; 54 Me. 45; 38 Ia. 427; 52 Ill. 161; unless the city itself was a wrong-doer between itself and the author of the defect or nuisance, 23 Pick. 24. But a lot-owner is not liable to a person injured, nor even to the city because it has had to pay the injured person damages merely because the sidewalk adjoining such lot gets out of repair and so remains for any length of time; he is liable only when he by his act creates the defect, 87 Ind. 77 (ice about a pump).

20. The city can not avoid liability by showing that the defect was occasioned in the construction of public works in the street over which an *independent contractor* had charge, and that it was his negligence that occasioned the injury, 70 Ind. 65; 57 Ind. 191. See *note* 33. If there are several joint wrong-doers, one can not recover off the other on the ground that he has paid the whole amount of damages, 30 Ind. 53. But where a city orders a street to be improved, and the abutting lot-owner undertakes and performs it so negligently that a third person is injured, the city is not liable, unless the work was intrinsically dangerous, or the city authorities were in some way negligent, 112 Ind. 451. But if a person constructing public works in a street observes a degree of care proportionate to the danger, and is consequently without fault, he can not be held responsible for accidental injuries, because he has not failed in the observance of his duty, 85 Ind. p. 388; 81 Ind. 166. He may, however, be liable for a failure to properly guard an excavation, if the absence of guards causes the injury, 85 Ind. p. 387; 112 Ind. 451; and for negligence in making the excavation, 89 Ind. 503. Any one creating a nuisance in a street is liable to another injured thereby, 7 Ind. 83.

21. Where the defect is caused by a third party, or has recently occurred, the city must have *notice* of it to render it liable, 74 Ind. 378; 73 Ind. 367; 112 Ind. 576; 43 Ind. 574. If the defect has existed a sufficient length of time for the officers of the city to have an opportunity to learn of and repair it, that will be considered the equivalent of notice, or constructive notice, 74 Ind. 378; 91 Ind. 382; 86 Ind. 414, 462; 112 Ind. 576; 72 Ind. 196; 100 Ind. 396. One hour and three quarters is not enough to charge it with notice, 112 Ind. 576. In an action against the city for injuries caused by a defect in the street, either actual or constructive notice of such defect to the city must be shown by the plaintiff, 100 Ind. 396; 73 Ind. 367; 103 Ind. 41; but notice to the street commissioner, 73 Ind. 367; or to the mayor, 123 Ind. 334; or to a councilman of the city is sufficient, 74 Ind. 378; 124 Ind. 482. The complaint must either show that the city had notice or ought to have taken notice of the defect, 98 Ind. 467. It may be shown, when the defect is a hole in the street, that other persons stepped into it, to show notice, 119 Ind. 368.

22. *Negligence* in the person injured *contributing* to the injury is a complete defense to an action by him against the city for damages occasioned by such injury, however guilty of negligence the city may have been, 77 Ind. 322; 42 Ind. 339; 57 Ind. 86; 83 Ind. 261; 90 Ind. 545; 69 Ind. 33; 58 Ind. 224; 79 Ind. 547; 12 Ind. 264; 7 Ind. 83; 10 Ind. 40; 12 Ind. 515. Thus a person knowing that an obstruction is in a street may not pass the place when in consequence of the darkness of the night or of the rise of water over the street he can not see the obstruction, except at his own risk, 2 Ind. 586. But "knowledge

that there is a defect in a highway, making it dangerous to travel upon it, does not itself make it negligence to use the highway carefully and cautiously. Knowledge of the existence of the dangerous place does, however, make it incumbent upon the traveler to use care and caution proportionate to the danger which he knows lies in his way," 75 Ind. 400; 90 Ind. 545; 112 Ind. 538; 124 Ind. 482; 26 N. E. Rep. 593. A person may, therefore, travel on a defective highway which he knows to be dangerous if he uses care proportionate to the danger he encounters by reason of the defect or obstruction, 99 Ind. 10; 75 Ind. 400; 77 Ind. 29; 82 Ind. 147; 83 Ind. 76, 326; 86 Ind. 111; 90 Ind. 205, 445; 93 Ind. 287; 89 Ind. 48; 94 Ind. 72; 112 Ind. 113; 123 Ind. 581; 124 Ind. 482. A direct averment in a *complaint* that the plaintiff was injured without his fault or negligence is sufficient to show that he was not guilty of contributory negligence. Where it alleges that the injury occurred without the fault of the plaintiff, it will be sustained, unless it clearly appears from the facts specifically stated that there was negligence on the plaintiff's part which contributed to the injury, 122 Ind. 538; 124 Ind. 482. A city, however, is not liable to one who sustains an injury by reason of a defective sidewalk, if the latter *could have avoided* the injury *by looking*, and shows no excuse for failing to look, 117 Ind. 324. The *concurring fault of the driver* of the vehicle in which the plaintiff is riding will not defeat his action, 122 Ind. 39; 116 Ind. 121; 116 U. S. 366; 105 Ill. 364, S. C. 44 Am. R. 791; 113 Pa. St. 544, S. C. 57 Am. R. 483.

23. "A city is *not an insurer* against accidents upon its streets and sidewalks. It is simply required to keep its streets and sidewalks in a reasonably safe condition for persons traveling in the usual modes by day and night, using ordinary care. A man may stumble and fall anywhere, in a house or in a street, but because he happens to fall in the street, it follows by no means that the city is responsible for the injury he receives. There are slight inequalities in sidewalks and other trifling defects and obstructions against which one may possibly strike his foot and fall, but if injury might be avoided by the use of such care and caution as every reasonable and prudent person ought to exercise for his own safety, the city would not be liable," 99 Ind. 10; 43 Ind. 574; 6 Cush. 524; 4 H. & N. 781; 56 Ill. 270; 77 N. Y. 83; 100 Mass. 255. (The city can not demand a *bill of particulars* in an action for the injuries sustained, 125 Ind. 323.)

24. Dangerous excavations *along the side* of a street must be guarded by the city; and even those in close *proximity* to the end of the street, 74 Ind. 520; 77 Ind. 29; 103 Ind. 328; 108 Ind. 530; 43 Ind. 574; so a bridge over an alley, narrower than the sidewalk, unlighted and unguarded, may render the city liable, 125 Ind. 522.

25. The city is also liable for defects in *bridges*, within its limits, causing injuries, 42 Ind. 339; 55 Ind. 250; 74 Ind. 378; 87 Ind. 509; and even for crossings *constructed* by *private persons*, 100 Ind. 396; or for bridges built by the county, 119 Ind. 196, for the county is not liable even though it undertake to repair such bridge, 26 N. E. Rep. 58. The city is not bound to provide a bridge strong enough for a traction engine, 26 N. E. Rep. 42.

26. It is the duty of the city to see that *building materials* or other obstructions in the street are properly *guarded* or protected by lights, barricades, or such other means as may be necessary to render travel reasonably safe, 71 Ind. 5; 45 Ind. 429; 57 Ind. 192; 70 Ind. 65.

27. A city, as a general rule, is not liable for the negligence of an *independent contractor*, 79 Ind. 492; 64 Ind. 345. But see 70 Ind. 65; 102 Ind. 372. Nor is it liable for the act of any one making an *unlawful use* of the street, such as *coasting* therein, 88 Ind. 330; 85 Ind. 130. Nor is the city liable even though it by ordinance permit coasting in a particular street, 53 Mich. 98; 88 Ind. 330. A city may, by *mandate*, compel a *railroad company* to lower or raise its track so as to conform to the established grade of a street, and to render it safe for travel, 37 Ind. 489.

28. A railroad company, under the general railroad law, is *liable to build bridges* at all street crossings over its track wherever it runs through the city so far below the surface as to render them necessary; and where they can not be built, it must build street crossings the whole width of the street, R. S. 1881, § 3915; 116 Ind. 446. In a populous city it may also be compelled to build a *viaduct* over its track at a street having a large daily travel upon it, without any

statute to that effect, 39 Minn. 219. Where a city authorized a track to be laid in a plank-covered street for the use of a street railway, the iron rails projecting four inches above the planked surface, and permitted it to remain in that condition to the injury of persons using the street, it was held liable for its own negligence in failing to exercise the ordinary care and skill required of a municipal corporation in making and keeping its streets in a reasonably safe condition for travel by persons employing ordinary care. Usually such an obstruction is a question of fact for the jury, 122 Ind. 39. A city is liable, in the absence of contributory negligence, for injuries resulting from the *fright of horses* of ordinary gentleness, at objects naturally calculated to frighten them, and which the city has negligently placed, or permitted to be placed, and to remain upon the streets, 107 Ind. 475; 114 Ind. 525; but it is not liable for the acts of persons it licenses to use its streets, unless the thing licensed is extrinsically dangerous, 112 Ind. 576.

29. In an action against a city a resident *tax-payer* is not competent to serve as a *juror*, 119 Ind. 368; 90 Ind. 545; 51 Ind. 119.

30. Where one, while passing along the street of a town in charge of a *prisoner*, was seized by the latter, in an attempt to escape, and thrown into a pit negligently permitted by the town authorities to remain in the street, whereby he suffered injury, the town was held not liable, its negligence not being the *proximate* cause of the injury. The town was not bound to provide against *extraordinary* conditions or *circumstances*, 115 Ind. 51.

31. A city is not liable for permitting a *dangerous wall* to stand on one side of an alley which falls and injures another wall on the opposite side; but where two persons own buildings on the opposite side of a public alley, and the owner of one, after it has been burned, negligently permits the ruined walls to become dangerous, he is liable to the adjacent owner for injury to his property caused by the walls falling upon it, although the city marshal volunteered to take charge of the ruins and have the walls torn down, if necessary, 117 Ind. 126.

SURFACE WATER.

32. A city is not liable for *surface water* running off its streets upon the adjoining lots, unless it accumulates it in a body, then, in that condition, or in a stream, throws it on such lots; and if it, by grading, accumulates it in a body, it must provide for its escape, 96 Ind. 236; 38 Ind. 348; 75 Ind. 241; 72 Ind. 134; 84 Ind. 325; 89 Ind. 77. But if the accumulation of water was only an incident of the grading, and a plan of grading was not adopted negligently, the city will not be liable, unless the grading was negligently performed, 119 Ind. 1. A city is not liable for *overflow* caused by unprecedented *floods or freshets*, but it must make provision for ordinary freshets and storms; 3 Ind. 236; and in doing so it must take into consideration the past history of the water in that vicinity and make reasonable provisions for freshets of a similar character there which had previously occurred, and which were not of an extraordinary character, 84 Ind. p. 328; 3 Ind. 236. The city is, however, liable for an injury caused by a defect in a street, even though such defect is caused by floods of unusual precedence, after it has had notice, or should have taken notice, and had time to repair or guard the defect, 83 Ind. 76; 86 Ind. 462. See § 3106, *notes*. But where a city granted a railroad company the right to lay its track in the street, and such company put a culvert in the street and under its track for its own convenience, which was not sufficient to carry off the water, it was held that the city was not liable, 26 Ind. 17.

33. If a city construct an open ditch upon a street, so near to the plaintiff's lot as to cause portions thereof to fall into the ditch, and so as to deprive him of *access* to his residence, and to affect the *healthfulness* of his property by causing *filthy water* and *sewerage* to become stagnant adjacent thereto, it is liable in damages, 119 Ind. 148.

34. If a city adopt a *proper plan* of drainage and lets the contract for the doing of the work, the contractor to use his own methods and means for the construction of the work, the city is not liable for damages resulting from the *contractor's negligence;* but if the city adopt a *defective plan*, and the work is

constructed according thereto, and a special injury results to a property owner by reason of negligence in devising the plan, the city is liable, 119 Ind. 148.

GENERALLY.

35. A cause of *action* accruing to a person in his lifetime against a city for damages resulting from the construction of a ditch, *survives* and his administrator is the proper plaintiff, 119 Ind. 148.

36. In such case the damages *accrue to the person* who owns the property at the time of the injury, and his right to maintain an action therefor is not affected by the fact that he *parts with the title* to the real estate after the commencement of the action, 119 Ind. 148.

37. It is no answer that the city has reached its *constitutional limit of indebtedness*, 27 N. E. Rep. See § 220, *note* 4.

38. As a rule a city is not liable in damages to any one falling down on a *stairway* opening into the street at its margin or even within the margin, even though the person injured is blind, 26 N. E. Rep. 882.

39. The *repair* of a street, even narrowing it, can not be *enjoined*, unless the person complaining would suffer irreparable injury, 26 N. E. Rep. 676.

ADDITIONAL NOTE.

To show negligence in the case of a sidewalk it must appear, [1] That the city had notice, actual or constructive, of the dangerous condition of the walk in time to remedy it, and [2] that, having such notice, it was the city's duty to remedy it, 44 O. S. 505. Allegations in a petition that on a sidewalk of a public street, in front of private property, the city suffered ice and snow to accumululate and for a number of days to become smooth and slippery, and dangerous, and the city might have informed itself of this condition of the walk in time to have it made safe before the accident do not set forth a cause of action, *Ibid.* A property owner is not liable for injury from slippery sidewalk, by reason of the fact that a city ordinance requires him to clear the snow and ice from his pavement, 1 Disney, 532; 14 Gray, 249. A person who is guilty of contributory negligence by attempting to pass over a sidewalk which he knows to be dangerous by reason of ice upon it can not recover, even if the corporation would otherwise have been liable, 33 O. S. 246. If the corporation is held liable for damages by reason of the unsafe condition of sidewalks, it has its remedy over against the party by whose act they were rendered unsafe, 4 Wall. 657; 54 Me. 46; 9 Allen, 17; 47 N. Y. 475. And, if such person had notice of the pendency of the action, the judgment is conclusive as to the existence of the defect, the liability of the corporation and the amount of damages, 10 Gray, 496; 49 N.Y. 657. And the corporation may, in addition, recover reasonable expenses, including counsel fees, 122 Mass. 100.

[1885, p. 75. Approved March 9, 1885, and in force July 18, 1885.]

SEC. 3161*a*. County commissioners—Bridges within cities. 4. All bridges, the estimated costs of which shall exceed five hundred dollars, to be built within the corporate limits of any city or town within this State, shall be built by the board of county commissioners in the same manner and paid for out of the same funds that other bridges without such corporate limits of such town or city are by law built and paid for. [El. Suppl. § 1521.]

See § 3161, *note* 25.

[1891, p. 368. Approved March 9, 1891, and in force June 3, 1891.]

Sec. 3161*b*. Street grade for railroads. The common councils of incorporated cities shall have the power to enforce ordinances to establish the grade for railroad tracks on a level with improved streets or on streets being improved, and provide a penalty for the violation of such ordinance on the refusal of any railroad company to comply with its provisions.

See § 3224*e*. See § 3161, *note* 27.

[1867 p. 33. Approved and in force March 14, 1867.]

Sec. 3162. Petition for street improvements. 68. When the owners of two-thirds of the whole line of lots or parts of lots (and measuring only the front line of such lots as belongs to persons resident in such city) bordering on any street or alley, consisting of one whole square between any two streets crossing the same; or, if the common council deem it expedient, for any reasonable distance upon any street or alley less than one whole square or block,—shall petition the common council to have the sidewalks graded and paved, or the whole width of the street graded and paved, or for either kind of improvement; or for lighting such street according to the general plan of such improvement in said city,—the common council may cause the same to be done, by contract given to the best bidder, after advertising to receive proposals therefor. And the common council shall have power to compel the owner or owners of any lot or a part of a lot on any street or alley, or upon any part of any street or alley, to repair the sidewalks in front of their respective lots or parts of lots; and in case the owner or owners of any lot or part of a lot on any street or alley or any part thereof, fail or refuse to repair the sidewalks in front of their lots, the common council may cause such repairs to be made by the street commissioner, at the cost and expense of the owner or owners of such lot or lots; and the city shall have a lien on such lot or lots for the reimbursement to her of the cost of such improvement. And the common council are hereby invested with full powers to pass by-laws and ordinances providing how and in what manner the repairs shall be made, and in what manner the same shall be assessed and collected from such owner or owners, and the manner in which the lien of the city for the expense incurred by her may be enforced against the lot or lots of such owner or owners: *Provided*, That any incorporated city having a population less than ten thousand may, by a two-thirds vote of all the members of the common council, cause plank or gravel walks, of such dimensions as such council may determine, to be constructed, either upon the natural grade of the sidewalks therein, or any modification thereof established by such council, and the costs and expenses of any such improvements, or repairs thereto, shall be a lien upon the real estate front-

ing thereon, and shall be assessed and collected in the same manner as now prescribed by law for collecting assessments for improving streets, alleys, and sidewalks: *Provided, further,* That when the State of Indiana is the owner of property on or along the street or streets proposed to be improved as hereinbefore provided, the common council shall not contract for the execution of said improvements involving the State in any liability, without first obtaining the written consent and approval of the auditor and treasurer of state, but such city may make such improvements at her own expense.

1. An *agreement to pay* for signing a petition for a street improvement is void, 42 Ind. 1.

2. The order for improvement must be *entered of record.* The work must be contracted in writing, after advertising. And if material be taken from a street not ordered to be improved, for the improvement of another, the city is liable in damages for any injury to property upon the street from which such material is taken, 36 Ind. 90.

3. The improvement of a street upon petition need not be limited to *one square*, 34 Ind. 140.

4. Although a street be *outside the city limits*, if the council act with good faith, under a misapprehension, the members are not liable to the contractor personally, 42 Ind. 106.

5. It is not necessary that the *mayor* should *sign an ordinance* for a street improvement, 52 Ind. 411.

6. Courts take *judicial notice* that a city has the power to improve streets, 19 Ind. 135. This section is *constitutional;* upon the ground that the lands assessed are enhanced in value to an amount equal to the cost of the improvement, apportioned among those specially benefited, 114 Ind. 200, 429; 110 Ind. 279; 29 Ind. 329, 220; 43 Ind. 347. It is valid, also, so far as *notice* to the land-owner may be essential to enforce a lien, 114 Ind. 429. The city has full power to order *repairs*, 23 Ind. 381; 36 Ind. 90; but the power to make assessments is *strictly construed*, 118 Ind. 289; yet any matter not affecting the jurisdiction of the council is not, 125 Ind. 455.

7. In this State a city is liable to abutting lot owners for *consequential damages* resulting from a change in the established grade of a street or alley, 113 Ind. 425; 100 Ind. 242; 50 Ind. 151; 120 Ind. 254; but is not responsible for *consequential injuries*, resulting from the grading, where the work is done in a careful and skillful manner, 103 Ind. 314; 108 Ind. 7. See § 3073, *notes*. These damages must be sought by the statutory remedy, 36 Ind. 522.

8. The city may order improvements to be made by a *two-thirds* vote, without a petition, 17 Ind. 175; 20 Ind. 315; 90 Ind. 567; § 3164; and it must, so appear on appeal from a precept, 48 Ind. 116; 40 Ind. 310; 38 Ind. 198; and so where the vote is on a *petition* that does not conform to the statute, yet if the improvement is *ordered by a two-thirds vote*, the defect in the petition is totally immaterial, 15 Ind. 112; 125 Ind. 407; 1 Ohio C. C. 90; 26 Ohio St. 49.

9. A *resolution* for the improvement of a street is sufficient; an *ordinance* is unnecessary, 15 Ind. 112; 36 Ind. 90; 22 Ind. 491. The order for street improvement must specify the *nature and plan* of the work in such a manner as to afford a basis for letting the contract, 77 Ind. 92. It "must, in appropriate terms, either ordain, resolve, or declare that the street to which it refers shall be improved, specifying the nature, character, or plan of the proposed improvement in such a way as to give at least a general direction to the letting of the work and the execution of the contract contemplated by such order. Such an order is, in some respects, analagous to a judicial act, and ought clearly and explicitly to prescribe what it authorizes to be done as regards the contemplated improvement to which it is intended to apply," 62 Ind. 549; 77 Ind. 92. It need not specify with particularity of detail what such im-

provement shall be, 109 Ind. 206; a general direction as to the character without describing it in detail is insufficient, 109 Ind. 227. Consequently an order which does not specify, in a Nicholson pavement, of what kind of wood the blocks shall be made, how they shall be laid, and to what grade, but leaves these and like particulars to the city engineer, is insufficient, and will not warrant a proceeding to sell the property improved by a forced sale, 77 Ind. 92. It is a delegation of power which the council is not authorized to make, 77 Ind. 92. But an ordinance providing that a street shall be "improved by graveling in the street, brick sidewalks and paved gutters," according to specifications to be prepared by the city civil engineer, and providing for the advertisement for bids and the assessment of abutting property, is not void for uncertainty, but is sufficient to authorize the letting of a contract for the work, 114 Ind. 200. It being the duty of the city engineer to prepare plans and specifications, it will be presumed that he prepared them before the contract was let, 109 Ind. 206 (questioning 77 Ind. 92). His plans are competent evidence in a suit to collect a street assessment, 109 Ind. 227.

10. It is entirely *optional* with the city whether it will improve a street; and the courts will not compel it to do so, 34 Ind. 471; 17 Ind. 267; 100 Ind. 242; 120 Ind. 520; 125 Ind. 455.

11. A street may be *re-improved* at the expense of the abutting property holders; and the council is the exclusive judges when such re-improvement is necessary, 100 Ind. 242; 17 Ind. 267; 34 Ind. 140, 471; 48 Ind. 116; 36 Ind. 90; 50 Ind. 151.

12. Any *patented process* can be used in the improvement of a street, 13 Atl. Rep. 383; 17 Mich. 246; 46 N. Y. 100; 50 N. Y. 513; 15 Kan. 126; 35 Cal. 695, 699; 23 Wis. 590; 21 La. Ann. 143. See *note* 29.

13. Until after *advertisement* for proposals a city can not make a valid contract, 38 Ind. 233; 19 Ind. 137; without it the contract is void, 19 Ind. 135. If an ordinance directs the particular manner in which such advertisement for bids shall be made, the contract for the improvement can not be sustained if the direction is not followed, 45 Ind. 438. Thus advertising in one newspaper is not sufficient, if the ordinance requires two, 109 Ind. 227. Where the advertisement was by mistake for opening bids on *Sunday*, and they were opened the Saturday immediately before such Sunday, the contract was upheld, 65 Ind. 27; 70 Ind. 21. The notice should be for a *reasonable time*, but the statute requires no particular time, 48 Ind. 116; 46 Ind. 550. Five (48 Ind. 116), four (38 Ind. 198), and eight days, accompanied by posted notices for that length of time has been held insufficient, 46 Ind. 550. Upon an appeal from a precept under the old statute previous to 1885, if the transcript did not contain an averment that an advertisement or some notice for bids was made, it was liable to a demurrer for want of facts, 109 Ind. 227; 114 Ind. 200; 41 Ind. 153; 38 Ind. 207; 36 Ind. 90; 38 Ind. 233. But where it appears that some kind of a notice was given, its sufficiency can not be inquired into after the work has been done, under color of the proceedings, with the acquiescence of the parties benefited. The court was inclined to think that no inquiry as to the sufficiency of the notice could be made under any circumstances where the appeal was from the precept, 114 Ind. 397, 200; 121 Ind. 534 (overruling 38 Ind. 198, 233, and 45 Ind. 438).

14. On appeal from a precept, the transcript must show that a *quorum* was present when the work was ordered, 41 Ind. 406; and if the work was ordered without a petition, the transcript must show that the work was ordered by a *two-thirds* vote of all the members of the council, 38 Ind. 198; 40 Ind. 310.

15. No objection can be taken to an *order* for the improvement of a street at the expense of the adjoining property owners, on account of no reference to the liability of the city for so much as is occupied by *public grounds* and *street* and *alley crossings*, when the record does not show that there were such public grounds and crossings, 38 Ind. 198.

16. Where the *track* of a *railroad* company borders upon the street, it may be assessed for improvements, 68 Ind. 562; 41 Ill. 306; 10 O. S. 159; 12 Ia. 112, but a railroad track laid in the center of a street by the permission of the council, is not liable for street improvements, unless the permit is conditioned that an acceptance shall render it liable for them. See 42 Conn. 279, S. C. 19 Am. R. 534;

38 Conn. 422, S. C. 10 Am. R. 399; 21 Minn. 526; 88 Pa. St. 424; 33 Pa. St. 41; 24 Pa. St. 465; 81 Pa. St. 366; 34 N. J. L. 99; 60 Ill. 267; 90 Ill. 573; 78 Ky. 357. A *street railway company* not required to repair a street is not bound to improve it, 26 N. E. Rep. 189. See *note* 18.

17. So it has been held that a *cemetery* may be assessed and sold, 46 N. Y. 506; 7 Md. 517; 10 Bush. 549; S. C. 19 Am. R. 78; 42 Oh. St. 128; or ground used for *charitable* or *educational* purposes, 10 Oh. St. 110; 4 L. Ann. 1; or agricultural land, 109 Ind. 206; 34 Ind. 497. A *court-house* or public square is exempt from assessment and sale, 94 Ind. 553; 12 Ind. 620; 116 Mass. 193; 71 N. Y. 498; but property used for religious purposes is neither exempt from assessment nor sale, 107 Ind. 1; 38 Ind. 3; 36 Ind. 338. (See 11 John. 80; 13 Pa. St. 104; 6 R. I. 235; 2 Mich. 587; 8 Bush. 508.)

18. The fact that a *street railroad* company is *under* a *contract* to *repair* or *improve* the street does not prohibit the city's ordering the work done at the expense of the adjoining property, 65 N. Y. 349; 47 N. Y. 475. See *note* 16.

19. Power to improve a street includes power to improve the *sidewalk*, 109 Ind. 206.

20. The city must not *deviate* in any substantial manner *from* its *charter* or the proceedings will be void; and it has no power to make the improvement, except as conferred in that instrument, 110 Ind. 259. *Statutes* conferring power upon a city to make assessments for street improvements are *strictly construed*, 118 Ind. 289; 81 Ind. p. 498. But an *injunction* to prevent the improvement of a street is a *collateral attack* upon the proceedings of the city, and only defects or irregularities affecting the *jurisdiction* can be made available. Questions as to the manner in which the work was done under the contract, and kindred questions, can not be considered in such suit, for they do not go to the jurisdiction, 125 Ind. 407.

21. The council may reserve the right to reject all *bids* for contracts, and after it has done so, it may at a subsequent meeting, without a *re-advertisement* for bids, *reconsider* the vote of rejection and award the contract to one of the original bidders, 114 Ind. 200. So the city, with the consent of the contractor, may *modify* the *contract* in respect to the material and quality, if such modification does not have the effect to increase the cost. In such an instance the city must act in good faith, 30 Ind. 192; 22 Ind. 491, 502; 121 Ind. 534. The city may agree with the contractor that he will take *city orders* at par for so much of the work as the city is liable for, 22 Ind. 491. The city may *extend the time* for the completion of the work, 34 Ind. 140; 62 Ind. 57; 118 Ind. 275; 27 N. E. Rep. 486. Only the council can let the contract, which must be in writing, 17 Ind. 175; 22 Ind. 492; but a bid in writing, containing all the particulars of a contract, when accepted by the council is sufficient, 17 Ind. 318. See 1 Ind. 281. Slight *deviations* in the contract from the ordinance does not vitiate the proceedings, 52 Ind. 411.

22. The *dirt* removed from the street improved belongs to the adjacent lot owners. It *can not be taken* and used by the city, except to improve other streets, alleys or public places, the grading of which is of the same general plan, 78 Ind. 1; 36 Ind. 90; but a provision in the contract that the surplus earth shall belong to the contractor can not be questioned in a proceeding to enforce an assessment, 118 Ind. 275.

23. Under no circumstances is the *city liable* when the contractor was to receive his pay by local assessment; even though the property improved and assessed bring less, on sale, than the contract price, 13 Ind. 245; nor are the members of the council, if they acted in good faith, 42 Ind. 106.

24. The city may provide that the *contract* for street improvement shall not be *assigned* without consent of council; and if it is, on a precept to collect, such consent must be averred, 40 Ind. 382; but where the transcript on appeal affirmatively shows an assignment acted upon and recognized by the council, it will be sufficient, although there was no formal order entered approving the assignment, 121 Ind. 534.

ADDITIONAL NOTE.

25. *The grant of power* to municipal corporations to make special assessments is to be distinguished from the power to tax, and is constitutional, 5 O. S. 243; 5 O. S. 520; 8 O. S. 333.

26. *Declaration of intent to charge owners*, before improvement is made, is necessary to a valid assessment, 2 Handy, 261.

27. *Property to be assessed must be designated* before improvement is made, otherwise assessment will be void, 34 O. S. 468; 42 O. S. 522; but this was formerly not necessary in assessments for lands appropriated, 31 O. S. 387. An ordinance which does not properly designate the property to be charged will not authorize a charge of any kind, and the proceedings do not fall within the curative provisions of § 2289, 34 O. S. 481. "Lots and lands" includes all real property, 18 O. 514; includes property of railroad used exclusively for its track, 10 O. S. 159; 19 O. S. 589; 68 Ind. 562; also wharf property, 1 C. S. C. R. 57; also cemetery lots, 42 O. S. 128; also property belonging to board of education for school purposes, 2 Bull. 184; also property of institutions of purely public charity, 2 Bull. 158, 165; 6 Rec. 26. Designation of a street, a part of which lies outside of the corporation, has reference only to the part within the corporation, and the assessment may be upon that side, 1 C. S. C. R. 183. When an assessment is made on abutting property, a lot which abuts must be included in the designation, although it is not within the corporation at the time the improvement is ordered, 24 O. S. 232. Property abutting a street dedicated on condition that the lots should not be charged for an improvement without the consent of a majority of the abutting owners, is assessable; dedication takes effect, but condition does not, 31 O. S. 506. Two streets so connected as to form a continuous line of travel, though called by different names, may be improved as one street, 2 Bull. 337; and an intermediate part between two designated points may be omitted, and the separate portions improved as if contiguous, 26 O. S. 284.

28. *Petitioners* may *withdraw* at any time before final action is taken on the petition by ordering improvement, 27 O. S. 218; but not after final order is made, 3 O. C. 338; 34 O. S. 44; 44 O. S. 484. Finding that the requisite number have signed is not conclusive of the fact, 22 O. S. 584; 32 O. S. 544; 35 O. S. 444. Petitions need not be on the same piece of paper, 36 O. S. 288; 32 O. S. 544; but signatures to petition for improvement which has been abandoned, can not be considered, 35 O. S. 444. Slight differences in wording of petitions for substantially same object will not relieve the property owner of burdens imposed by granting the petition, 40 O. S. 381; but if petition is changed after signing without privity of signers, it will be void as to them, 2 Hill. 466. Widow having dower interest unassigned can not sign, 22 O. S. 584; guardian of minor may sign for ward, 32 O. S. 544; whether tenants in common constitute "one owner," *quære*, *Ibid.;* but if they hold otherwise than as heirs, each should be counted as an owner, 35 O. S. 444; guardian of an imbecile may sign, 5 Bull. 903; 9 Rec. 479; also lessee of perpetual lease, 5 Bull. 903; one person may sign for another, providing action is ratified before final order made, 44 O. S. 479. Petitioner who dies before final action on petition should be counted, 35 O. S. 444; also one who conveys his property after signing, 5 Bull. 903. It is not a valid objection to an improvement that one or more signed the petition therefor on promise of others that they would pay the assessment, 35 O. S. 444. For construction of the term "owner" see (*tenant in dower*) 2 Swan (Tenn.) 364; (*lessee for long term of years*) 11 Md. 186; (*lessee for two years*) 36 O. S. 24; (*officers of corporations*, *executors*, *administrators*, etc.) 59 Cal. 206; 12 Bull. 119; 44 N. Y. 315.

29. Contract made without advertising for bids is void, 24 O. S. 232, 248; 9 Neb. 358; 53 Cal. 389; 48 Mo. 17; 85 Pa. St. 379; 24 O. S. 232, 248. Proceedings are irregular and void where a substantial part of the work has been omitted from the advertisement, 2 C. S. C. R. 44; or where a different work is contracted for from that advertised for, 11 Minn. 174; or where advertisement is for three weeks, and should have been for four, 24 O. S. 232; or where advertisement refers to plans and specifications on file, which have not been prepared, *Ibid.* 248; or where statute requires "two weeks" notice, and ten days

only are given, 2 C. S. C. R. 44; or posting for five days and notice is posted three days instead, 40 Cal. 255. Where bids are required to be accompanied by a specimen of material, the specimen becomes part of the bid, 16 Bull. 211. A bid, having been received, can not be altered or amended on account of mistake unless the data for its correction appear on the face of the bid, 19 O. S. 97; 4 O. C. C. 86. Provision as to bids does not apply to the improvement of a park, conveyed to city in trust, to be cared for and improved by a committee of council, 36 O. S. 169; also held, in New York, not to apply where the thing to be furnished consists of a single article, like gas, and one person has a monopoly of the manufacture, 33 N. Y. 309. Publication in a newspaper means a paper in the English language, 26 O. S. 49; but an advertisement in English, in a paper published in German, has been considered sufficient, 45 Cal. 30.

30. Council has no power, by rule, to require the bid, in addition to the guaranty provided by the ordinance, to be accompanied by a declaration of two freeholders, that they are qualified to and will become sureties for the faithful performance of the work, if contract is awarded to the bidder, 15 Bull. 196. And if council rejects a bid under such rule it will be enjoined from awarding the contract to the next lowest bidder, at the suit of a tax-payer, *Ibid.*

31. An award to other than the lowest bidder, through honest mistake, will invalidate an assessment, but the fair value of the work may be collected, 1 Bull. 104; but where one is, by collusion, falsely made to appear the lowest bidder, nothing can be collected, 17 Bull. 116. Board has the discretion to release the lowest bidder at his request, without invalidating the assessment, 5 Rec. 153. If the board, after receiving bids, awards the contract to any one, they are bound to award it to the one offering to do the work at the lowest price, although a lower bidder has failed to comply with the statute, and may be compelled by mandamus, 21 O. S. 311; 4 O. C. C. 86; or, if they attempt to award the contract to any other than the lowest bidder, they may be enjoined at the suit of a tax-payer, 15 Bull 196. But where the lowest bidder fails to comply with requirements, or for other reason is not accepted, they may reject all bids and re-advertise, in which event they can not be compelled to award the contract to any bidder, 36 O. S. 326; 1 O. C. C. 194; 3 Bull. 542; 3 O. C. C. 542; 93 N. Y. 557. The board has no right to determine who is the lowest bidder by other qualifications than those called for in the advertisement for proposals, 49 N. J. L. 339. As to lowest bidder in the aggregate, see 20 O. S. 425.

32. *Patented pavements.* Upon the question whether there can be competition for the construction of a pavement covered by a patent, the courts are about evenly divided. The following cases hold that there can not: 23 Wis. 590; 21 La. Ann. 143; 35 Cal. 706, 695. The following that there can: 17 Mich. 246; 46 N. Y. 109; 50 *Id.* 573. If competitive bidding is not required by statute, there is no objection to receiving bids for a patented process (*Wycoff pavement*), 15 Kas. 130. And if the corporation, before letting the contract, acquires the right to permit any successful bidder to use, on reasonable terms, the patented pavement, the assessment can not be attacked on the ground of want of competition (*Parisian patent asphalt*), 42 O. S. 585. But even where it is held that the patent will not destroy competition, a work composed of parts, some of which are patented and others not, should be let with separate bids for the patented article, 46 N. Y. 100. But it is held in New York that the provisions for letting to lowest bidder do not apply where the thing to be furnished consists of a single article, as gas, and one person has a monopoly of the manufacture, 33 N. Y. 309. See *note* 12.

33. The section contemplates a contract in pursuance of bids, and a lowest bidder who refuses to enter into a contract in accordance with the notice and specifications can not claim damages, 41 O. S. 39; but if the corporation inserts conditions in contract, not contained in the advertisement or records and files relating to the improvement, the contractor may recover, 26 O. S. 411. A contract is void unless made with the lowest bidder, 22 O. S. 546. Collusion among bidders will avoid the contract, 71 N. Y. 527; also collusion between the contractor and city officers, 17 Bull. 116. Provision of a contract that any alterations, modifications or extra work shall be provided for by written agree-

ment, may be waived by the corporation, 33 O. S. 336; 2 Bull. 33; so also may the time of completion, 28 O. S. 116. If the contractor abandons the contract, the corporation may sue for damages for the breach, or waive the breach and enter into new contract, or modify the old one, 2 Bull. 33. Where specifications for an improvement require materials of a certain standard, and advertisement provides that bids shall be accompanied by a sample, such sample, when a bid is accepted, becomes part of the contract, and corporation can not afterwards object if material equal to the sample is furnished, although it may not be equal to the standard, 16 Bull. 211; see also *Id.* 290.

34. Agreement among bidders which was held not to stifle competition, 24 O. S. 565.

ADDITIONAL NOTE ON SIDEWALKS.

35. Resolution and notice must be reasonably specific as to place; notice to repair 185 feet, where the owner has 385 feet, without stating what part, is too indefinite, 7 Bull. 30. Resolution requiring sidewalks constructed where "not already constructed," and reconstructed "where necessary," is not sufficiently specific, 51 Cal. 562; 53 Cal. 44. The owner of a corner lot may be required to pave the sidewalk on each street, 31 Gratt. 571; but his property can not be assessed for that part of the sidewalk forming the intersection beyond his line, 7 Bull. 79. Sidewalks may be ordered before the street is graded, 9 Kas. 155; 11 Kas. 384. Who is owner of old material in sidewalk is a question of fact, 26 O. S. 447; so also, whether curbing is part of sidewalk, 3 O. C. C. 493.

Petition for Street Improvement.

———, Ind., ———, 18—.

To the Common Council of the City of ———:

We, the undersigned, owners of real estate represented by the feet fronting and abutting upon ——— street, as designated below, from ——— to ———, a distance of ——— feet, hereby petition your honorable body for the [*describe the kind of improvement desired*] of said part of said ——— street, and for an assessment for the whole cost of such improvement of said ——— (except the proportion thereof occupied by street and alley crossings) against the abutting real estate.

Name of Owner.	No. of Feet.	No. of Lot.	Name of Addition or Subdivision.

Petition for Passage of an Ordinance.

———, ———, 18—.

To the Common Council of the City of ———:

Gentlemen: The undersigned, owners of real estate fronting on ——— street, between ——— and ——— streets, respectfully petition for the passage of an ordinance providing for ——— ——— ———.

.....	.....
.....	.....
.....	.....

Remonstrance Against Passage of Ordinance.

———, ———, 18—.

To the Common Council of the City of ———:

Gentlemen: The undersigned, owners of real estate fronting on ——— street, between ——— and ——— streets, respectfully remonstrate against the passage of an ordinance providing for the ——— ——— ———.

....	....
....	....
....	....

Special Ordinance for Streets and Sidewalks.

No. ——, ———, 18—.

AN ORDINANCE TO PROVIDE FOR GRADING AND GRAVELING ——— STREET AND SIDEWALKS, FROM ——— TO ———, AND FOR THE COSTS THEREOF.

SEC. 1. *Be it ordained by the Common Council of the City of ———, Ind.*, That ——— street and sidewalk—, from ——— to ——— be graded according to stakes set by the city civil engineer, on the following grade, to wit: Beginning at station ——— and the roadway graveled to a width of ——— (—) feet, and to a depth of ——— (—) inches in the center, sloping to ——— inches at the sides, with the best quality of raked, river or ——— creek gravel; and the sidewalks graded to a width of ——— (—) feet, and ——— (—) feet of the inner portion thereof graveled to a depth of ——— (—) inches, with the best quality of sidewalk gravel. And the lawns to be properly dressed up with fine earth and left perfectly smooth.

.....

All work to be done to the entire satisfaction of the city civil engineer.

And that the expense of ——— such ——— as aforesaid (except the proportion thereof occupied by the public grounds by said city bordering thereon, and the crossings of streets and alleys), be assessed against and collected from the owners of the lots and unplatted lands bordering on said ——— between the limits aforesaid, according to the provisions of §§ 68, 70, and 71 of the act of the general assemby of the State of Indiana, approved March 14, 1867, entitled "An act to repeal all general laws now in force for the incorporation of cities, and to provide for the incorporation of cities, prescribing their powers and rights, and the manner in which they shall exercise the same, and to regulate such other matters as properly pertain thereto," and § 69 of said act as amended by an act of the general assembly of the State of Indiana, approved April 14, 1881, and also of an act of the general assembly of the State of Indiana, approved April 13, 1885, entitled "An act concerning contracts made by order of the common council of cities for the grading and improvement of streets and alleys, providing the manner of estimating the cost thereof and of enforcing the same against the lots and unplatted lands abutting on such streets or alleys, fixing the liability therefor, and declaring an emergency."

SEC. 2. The city civil engineer is hereby directed to set the proper grade stakes and also to advertise, by publication one day each week for three successive weeks, in the ———, that sealed proposals, for the execution of said work, will be received by the ——— on the day named in said advertisement.

SEC. 3. This ordinance shall take effect and be in force from and after its passage.

Passed by the common council this ——— day of ———, 18—.

Attest : Mayor.

City Clerk.

INDORSEMENT.

S. O. No.....18..

AN ORDINANCE

To .....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

INTRODUCED BY

.....

With.....Petition..

Recorded in Record of Special Ordinances No.....Page.....

Form of Advertisement for Bids.

Office of the City Clerk, ———, ———, 18—.

Sealed proposals will be received by the common council of the city of ———, at this office, until 12 o'clock m., ———, 18—, for furnishing the necessary labor and materials for the improvement of ——— street, from ——— to ——— [*or any other matter for which bids are received*], according to the plans and specifications therefor on file in the office of the city civil engineer.

Each bid must be accompanied by a sufficient guaranty of some disinterested person, that if the bid is accepted a contract will be entered into and the performance of it properly secured.

Bidders are required to use the printed forms, which will be furnished on application.

The common council reserves the right to reject any or all bids.

By order of the Common Council,

City Clerk.

Form of Bids.

———, ———, 18—.

To the Common Council of the City of ———:

The undersigned, having carefully examined the plans, specifications and profiles for the improvement of ——— street, from ——— to ———, proposes to furnish all the material and do all the work necessary for said improvement, in strict accordance therewith, and the rules and regulations of said city, and under the direction and to the satisfaction of the common council [*or*, civil engineer] of said city at the following rates, viz.:

		Prices to be written in words in this column.		Prices in figures in this column.	
		DOLLARS.	CTS.	$	CTS.
Broken Stone, packed, . . .	per cubic yd				
Catch Basins, complete, . .	as per plan,				
Concrete, ...	per cu. yd.,				
Coping, ...	per sq. ft.,				
Crossings, ...	per lin. ft.,				
Curbs, Pattern A, ...	"				
" " B, ...	"				
" " C, ...	"				
Drain Pipe laid in place, including furnishing and jointing, ...in.....,	"				
Excavation for Drain Pipe, .	per cu. yd.,				
Excavation for Masonry foundation, ...	"				
Flagging, and Limestone Gutters, complete, . . .	per lin. ft.,				
Flagging Gutters, ...	"				
Grading, ...	per cu. yd.,				
Lumber, ...	per M., B. M.,				
Manholes, complete, ...	. . . . .				
Masonry, Brick, ...	per cu. yd.,				
" Squared Stone, . .	"				
" Rubble Coursed, .	"				
" " Uncoursed, .	"				
" Dry, Retaining Wall	"				
" Dry, Drain, . . .	"				
" Rock-faced, . . .	"				
Paving with Bowlders, . . .	per sq. yd.,				
" " Limestone, . .	"				
Rebowldering, including New Bowlders, ...	"				
Resetting Old Curbs, . . .	per lin. ft.,				
Relaying Flagging, ...	"				
Rolling, each layer, ...	per sq. yd.,				
Screened Gravel, loose, . .	"				
Etc., Etc., ...	. . . .				

Bidder.

Another Form of Bid.

———, *Ind.*, ———, 18—.

To the Common Council of the City of ———, *Ind:*

Gentlemen: The undersigned proposes to improve ——— from ——— to ——— by ——— (including any and all work and material that may be necessary to connect the work done with the adjoining work) in a proper and workmanlike manner, and according to the plans and specifications and profile on file in the office of the city civil engineer of said city, and according to the terms of special ordinance No. ——, ———, 18—, and according to the laws and regulations of the city, and under the direction and to the entire satisfaction of said city civil engineer, at the following rates to wit:

	Price written in words here.	Figures here. DOLS.	CTS.
Bowldering, per lineal foot . .	.....	.....	.....
Curbing with Stone, per lineal ft.	.....	.....	.....
Paving with Brick, per lineal ft.	.....	.....	.....
Graveling, per lineal foot . . .	.....	.....	.....
Double Walk-stone	.....	.....	.....
Single "	.....	.....	.....
Bowldered Wings, per square yd.	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Contractor.

INDORSEMENT.

NAME OF BIDDER,

.....

	Price. Dols.	Cts.
Bowldering	.....	.....
Curbing	.....	.....
Paving	.....	.....
Graveling	.....	.....
Double Walk-stone . .	.....	.....
Single " . . .	.....	.....
Bowldering, per square yd	.....	.....

Bond Accompanying Bid.

We, the undersigned, are held and firmly bound unto the city of ——— in the sum of one thousand dollars ($1,000.00), for the payment of which well and truly to be made we hereby jointly and severally bind ourselves.

Signed at ———, this ——— day of ———, A. D. 18—. The condition of this obligation is such that if the above proposal is accepted and the contract awarded to the above named bidder, ———, and the bidder shall within five days after such award is made enter into a contract, in the form prescribed, with at least two approved sureties, or in case the said bidder fail or refuse to perfect the said contract as aforesaid within the time limited as aforesaid, and then shall promptly pay to said city all the expenses it has been to in advertising for bids on said work, and shall also pay all other damages that may accrue

to said city by reason of such failure or reason as aforesaid, then this obligation to be null and void; otherwise to be of full force and virtue.

_____

_____

_____

A Resolution Accepting Bid.

TO ACCEPT BID, AND CONTRACT WITH ——— FOR THE IMPROVEMENT OF ——— STREET.

Resolved, That the bid of ——— for the improvement of ——— street, from ——— to ———, be accepted, the same being the lowest bid, in the aggregate, for said work. And the mayor is hereby authorized to enter into a contract with said ———, with ——— and ——— as his sureties for doing said work, according to the plans and specifications therefor at the following rates: [*Insert items and prices as contained in bid.*]

Contract for Street Improvement.

Advertisement No.——, ———, 18—. No.——

Estimate approved ——— day of ———, 18—.

This agreement, made and entered into this ——— day of ———, 18—, by and between ———, of the county of ———, and State of Indiana, of the first part, and the city of ———, said county and State, of the second part:

Witnesseth, That the said part— of the first part do— covenant and agree to ———. Said amounts to be collected by the said part— of the first part, at —— own expense, from the owners of the property bordering on said improvement, according to their respective number of feet, and from the city of ———, for the proportion of front feet on said ——— occupied by the crossings of streets and alleys and public grounds owned by said city bordering thereon; and said part— of the first part herein further agree— to pay any and all moneys due to any contractor, or to any person or persons furnishing any material whatever, and to any laborers employed by said part— of the first part, for any work done in the prosecution of such improvement. It is hereby expressly understood that no assignment of this contract shall be made to any other party without the consent of said city

The part— of the first part further agree— to perform the work according to special ordinance No. ——, ———, 18—, and plans, profile, and specifications on file in the office of the city civil engineer of said city, and to his entire satisfaction

.....

The said part— of the first part covenant— and agree— that —— will exercise, in the prosecution of said work, all proper skill and care; that —— will properly guard and protect all excavations or dangerous places, and will use all due and proper precaution to prevent injury to any property, person or persons whatever; and that —— will omit no reasonable precaution which will tend to the security of all persons and property. The contractor— further covenant— and agree— to supply all earth required to complete the necessary grading, and if a surplus, to remove the same to some street or alley, not exceeding a distance of half a mile, as shall be directed by the city civil engineer, and spread the same to his satisfaction. The contractor— further agree— to maintain the work and keep it in good repair, to the entire satisfaction of the city civil engineer, for a period of ——— years from date of final allowance of estimate, without cost to the city or property holders along the line of said improvement. And if at any time during the said period said work, or any part thereof, shall, in the opinion of the said city civil engineer, require repairing, said contractor shall, upon notice from said engineer, immediately make such repairs; and in case of failure to make such repairs, as aforesaid, within ten days from service of such

notice, the city shall have the right to purchase such materials as it shall deem necessary, and to employ such persons as it may deem proper, and to undertake and complete said repairs, and collect the costs of such repairs from said contractor— and sureties jointly and severally. Said work shall be finished on or before the ——— day of ———, 18—, to the entire satisfaction of the city civil engineer; and should said work not be finished by the time specified, and according to the above specifications, then the said contract shall be void and of no effect in law, and the said part— of the second part shall have the privilege and option of forfeiting this contract and of reletting the same; and the part— of the first part shall be liable for all damages that may accrue by said failure to perform said work according to this contract; and unless the said work shall be done within the time specified, the said part— of the first part shall not recover for any work done under this contract.

In testimony whereof, ———, the foregoing named part—, hereunto set — hand— this ——— day of ———, 18—.

For the city of ———:

_____ } Contractor—.

_____

Mayor.

Bond.

Know all Men by these Presents, That we, ———, of the county of ———, and State of Indiana, are held and firmly bound to the city of ———, Indiana, in the sum of ——— ($———) dollars, for the payment of which, well and truly to be made, we jointly and severally bind ourselves firmly by these presents.

The conditions of the above obligations are such, that if the above bound ——— shall faithfully comply with the foregoing contract, made and entered into this ——— day of ———, 18—, with the city of ———, Indiana, and fulfill all the conditions and stipulations therein contained, according to the true intent and meaning thereof in all respects, then this obligation to be void; otherwise to be and remain in full force and virtue in law; and in the event said city shall extend the time for the completion of said work, such extension shall not in any way operate to release the suret— on this bond.

Witness our hands and seals the day and year last above written.

_____ [Seal.]

_____ [Seal.]

_____ [Seal.]

State of Indiana, ——— *County*, *ss*:

The undersigned, suret— on the above bond, does each for himself solemnly swear that he is the owner in fee simple, in his own name and right, of real estate, situate in ——— county, Indiana, which real estate is clear and wholly unincumbered, and of the value of at least the amount named in the above bond.

[Signed]

_____

_____

_____

Subscribed and sworn to before me, a notary public in and for said county and State, this ——— day of ———, 18—.

_____

Notary Public.

State of Indiana, ——— *County*, *ss:*

The undersigned, suret— on the above bond, does each for himself solemnly swear that he is the owner in fee simple, in his own name and right, of real estate, situate in ——— county, Indiana, which real estate is clear and wholly unincumbered, and of the value of at least the amount named in the above bond.

[Signed]

Subscribed and sworn to before me, a notary public in and for said county and State, this ——— day of ———, 18—.

Notary Public.

INDORSEMENT.

No. .....

CONTRACT AND BOND

OF

.....

FOR

.....

.....

.....

.....

.....

.....

.....

.....

Bond..... $.....

Surety .....

.....

Approved by the common council.

..... 18..

Approved by the board of aldermen.

..... 18..

Attest:

.....

City Clerk.

Recorded in.....Book, Page....

.....

City Civil Engineer.

[1881 S., p. 391. Approved and in force April 14, 1881.]

SEC. 3163. Cost, how apportioned. 69. In all contracts specified in the last preceding section, the cost thereof shall be estimated according to the whole length of the street or alley, or the part thereof to be improved, per running foot; and the city shall be liable to the contractor for so much thereof only as is occupied by public grounds of the city bordering thereon and the crossings of streets and alleys, and the owners of the lots bordering on such street or alley or the part thereof to be improved shall be liable to the contractor for their proportion of the cost, in the ratio of the front lines of the lots owned by them to the whole improved line; and in making the assessments against such owners for the improvement, the ground shall be assessed across the ground fronting or immediately abutting on such improvement, back to the distance of fifty feet from such front line, whether such ground be subdivided by platting or conveyance or in other manner. All assessments where the ground to be assessed is held by more than one owner shall be in the proportion of the fair cash value of each

parcel, less the value of the improvements, to be determined by the city engineer; and in case of sale upon a precept, each parcel shall be offered and sold separately, beginning with the front parcel, and so on to the last or rear parcel: *Provided*, That when the owner of any lot shall have made any improvement in front of his lot in accordance with the general plan for the improvement of such street, and under the direction of the city engineer, he shall be entitled to a reasonable allowance therefor upon his proportion of the cost of such improvement; which reasonable allowance shall be determined by the said engineer: *Provided*, That all contracts made by any city, or by any officer under the authority thereof, for public improvements or otherwise, in the profits whereof any officer of such city shall be interested, directly or indirectly, shall be void.

1. This entire section is repealed by § 3165*a*, unless it is with the exception of the two provisos. The inference to be drawn from the supreme court's decision is that these provisos are still in force, 114 Ind. 246; 108 Ind. 189. Estimates are now made in accordance with the provisions of that section, which are substantially like the provisions of this section.

2. This section as amended in 1881 is not unconstitutional by reason of the mis-recital of the title of the amended act, 90 Ind. 567; nor is it unconstitutional because it assesses property back to a distance of fifty feet, whether it borders on the street or not; nor because it cuts off an appeal from the assessment of the city civil engineer, section 3165 remedying that defect, 90 Ind. 567.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3164. Payment—Lien—Order without petition. 70. When any such contract shall have been made, or shall have been heretofore made and shall have been in progress of fulfillment, the common council shall have power to cause estimates to be made, from time to time, of the amount of work done by the contractor, and to require such amount to be paid to him, deducting reasonable percentage to secure the completion of the contract, until the whole shall be finished, and to prescribe the time within which the whole shall be completed; and such estimates shall be liens upon the grounds upon which they are assessed, to the same extent that taxes are a lien, and shall have the same preference over other demands. The common council, with the concurrence of two-thirds of the members thereof, may order or cause any or all of the improvements mentioned in the preceding section, and repairs of any kind on streets and alleys, to be made in like manner, without such petition; and either charge and cause any or all of the expenses thereof to be assessed and collected, as hereinafter provided, when petition is made, or, if it is deemed just and right by the common council, to cause such expenses, or any part thereof, to be paid out of the general revenue of the city.

1. What property may be assessed, see § 3162, *notes* 17 to 19, and § 3165*a*.

2. Even though a petition for improvements does not conform to the statute in having the requisite number of signers, yet if the improvement is ordered by a two-thirds vote, the defect in the petition is immaterial, 15 Ind.

112; 125 Ind. 407. Where the improvement is ordered by a two-thirds vote, the transcript on appeal from a precept must show the vote, or at least that there was a two-thirds vote in favor of it, 48 Ind. 116; 40 Ind. 310; 38 Ind. 198. It is not necessary that the council enter of record their determination whether the improvement should be paid by proprietors, or out of the general fund; but if the latter course is determined upon, an entry of record to that effect should be made, 17 Ind. 175. If the council *adjudge* the *petition sufficient*, such adjudication is conclusive against *collateral attack*, 125 Ind. 407; 22 Bull. 153.

3. The council may *correct* a final *assessment*, 41 Ind. 221. (But see 33 Ind. 157, where it was held that a city could not revise or correct an assessment); 40 Ind. 235.

4. *Payments* made by the owner in *advance* of the estimate are valid, 12 Ind. 417.

5. Usually payments are made upon *estimates* of work done; and the last one is called the final estimate. When an estimate is made, the council directs its payment, and this direction is called an *assessment*. It is the duty of the city civil engineer to make the estimate and report it to the council. The council may hear evidence in opposition to his estimate, but such is not the practice. On appeal from a precept the transcript must show a report by the engineer to the council of an estimate, and that the council directed its payment and allowed it, 17 Ind. 175. The *final order* directing an estimate is *not affected* by a previous order refusing to do so, 109 Ind. 227; and it is *presumed* that the engineer in making and the council in approving it *did* their *duty*, 118 Ind. 275.

6. The above section is not *unconstitutional* because it provides no appeal from an estimate; that proceeding being authorized by § 3165, 90 Ind. 567; 114 Ind. 200, 429. The delegation of power to make the assessment, to the city civil engineer is a valid delegation, and the statute in that respect is valid, 90 Ind. 567.

7. A contractor can compel the city by *mandate* to make an estimate according to his contract; and neither the engineer nor any other city officer is a necessary party, 96 Ind. 206. The city can not defend on the ground that the proceedings were invalid, 113 Ind. 597.

8. The *assessment* must show the amount due on *each lot* or piece of land, 40 Ind. 235; and where an improvement severs land into two pieces, each must be assessed severally, 43 Oh. St. 69; 35 Oh. St. 369. In the case of *joint owners*, even as tenants in common, it should be assessed in the names of both, 33 Ind. 30; and if a lot is thus assessed when in fact the ownership was several, that fact may be set up on appeal from the precept by answer, and it is a good defense to the enforcement of the precept, 33 Ind. 30. In such a case it makes no difference that the person thus objecting did own the whole lot at the date the improvement was ordered, and sold it before the assessment was made. It is the date of making the latter that determines the rights of the parties, 33 Ind. 30. But the assessment of two lots jointly, owned by one person, will be valid after a joint sale; and the error at any time before sale may be corrected, 52 Ind. 411.

9. It is no defense that *other property* is *not* properly *assessed*, 40 Ind. 337; nor can the validity of other assessments be inquired into, 121 Ind. 534.

10. The *property* assessed must be so *described* that a person acquainted with surveying can find and identify it; but in doing so the ordinance or resolution ordering the work, the contract and the estimate of the engineer may be all used for that purpose, 68 Ind. p. 568; 48 Ind. 116.

11. The *lien* attaches only when the estimate is made, and not before; and a warranty deed executed before the estimate is made does not cover the lien that afterwards attaches by reason of such assessment. It does not relate back to the time the improvement was ordered, 38 Ind. 289; 39 Ind. 119. The lien probably does not attach until the estimates are approved by the council; 68 Ind. 562. See § 3165, *note* 46.

12. The phrase "any or all *improvements* mentioned in the *preceding section*," legitimately embraces the improvements named in § 3162, 15 Ind. 112; 22 Ind. 491.

13. If a party *stand by* and see an improvement progress under these sections, after it has progressed to the improvement of his property he is *estopped* to question the power of the city to make the contract, 30 Ind. 192; 34 *id.* 140; 114 Ind. 200; 109 Ind. 227, 206, 347; 108 Ind. 121; 118 Ind. 275; 122 Ind. 167, 107 Ind. 181. But, see *id.* 36. But by consenting that the city may build a stone-wall on his land so that the street can be graded and improved, such land-owner does not agree to pay for such wall, 56 Ind. 127. Persons signing a petition will be estopped to deny the power to grant the petition, but will not be estopped from objecting that the subsequent proceedings of the corporation are in violation of law, 39 O. S. 281; 22 Mich. 104; 56 N. Y. 257. See *note* 21 and § 3165, *note* 8.

14. *Coverture* is no bar to the assessment of real estate of a married woman, 41 Ind. 221. Nor is the omission to assess other property, 40 Ind. 337.

15. Money *voluntarily paid* on a street assessment can not be recovered back; nor can it be *refunded* by the city, 110 Ind. 259.

16. An *acceptance* of work done is *prima facie* evidence that the work had been done according to the contract, 42 Ind. 134; 118 Ind. 275.

17. Where the property assessed is *county property*, as a public square or court-house or jail-yard, the contractor must present his estimate to the board of county commissioners, 36 Ind. 87.

18. An estimate may be *assigned*, and if ratified by the council the assignee may collect it, 109 Ind. 227; 121 Ind. 534.

19. A proper *assessment* is the *basis* for a precept, and unless such an assessment has been made the precept is void, 92 Ind. 200; and a new assessment can not *relate back* to render the precept valid. For this error, the transcript is liable to demurrer on appeal, 41 Ind. 218. But a *new assessment* may be made, and a new precept issued, 41 Ind. 218.

ADDITIONAL NOTE.

20. The following irregularities are held to be fatal to an assessment: Omission to pass resolution declaring it necessary to improve, 18 O. S. 85; 27 O. S. 527; 2 Bull. 337; assessment of property not designated in the ordinance to improve, 34 O. S. 468; 56 Cal. 508; or omission of property which should have been assessed, 51 Cal. 15; 10 Wis. 196; collusion between city officers and bidder, by which the latter is falsely made to appear the lowest, 17 Bull. 116 (motion for leave to file petition in error in S. C. refused in this case, 17 Bull. 208).

21. *Estoppel* to deny the legality of an assessment may arise (1) by active participation in having an improvement made, 31 O. S. 592; or (2) by standing in silence without objecting, 39 O. S. 281.

Active participation. One who promises to pay the assessment, if the improvement is made will be estopped, 22 O. S. 584; or petitions and asks that the whole amount be assessed in a certain manner, 21 Bull. 62. The mere signing a petition for an improvement will estop the petitioner from denying the power to grant the prayer of the petition, 31 O. S. 592, but will not estop him from setting up irregularities in subsequent proceedings, under the petition, *Ibid.* 39 O. S. 281; 22 Mich. 104; 56 N. Y. 257. But signing a petition, together with active participation or encouragement in causing an improvement to be made, will estop the signer, 39 O. S. 281.

Silence. To be estopped by silence the owner must have known, 1. That the improvement was being made; 2. That the authorities contemplated paying for it by an assessment on abutting property; 3. That the defect on which he is insisting existed; and 4. Some special benefit must have accrued thereby to his property, 39 O. S. at page 303. For other cases on estoppel see 15 O. S. 64; 29 O. S. 500; 25 O. S. 169; 36 O. S. 601. See *note* 13.

22. *Other defenses.* Where notice to persons claiming damages was required to be given by assessing committee, one who had no claim can not object because such notice was not given, 1 O. S. 126; no objection to assessment on separate parts of a street, if omitted part was so designated in ordinance, 26 O. S. 284; arrangements between third parties and contractor can not affect the

liability of lot-owners, 26 O. S. 275. Premature assessment can not be collected, 26 O. S. 345. No defense to an assessment that a street has been changed from a canal to a street without new condemnation, or that a railroad company has been given right to lay a track therein, 31 O. S. 506. No objection to assessment that two streets which form continuous line of travel, though called by different names, are improved as one, 2 Bull. 337. There may be two contracts and two assessments for different kinds of work under one resolution to improve, 3 Bull. 556. Two or more persons, claiming relief on the same ground, may join in action to restrain the collection of an assessment, or one may sue on behalf of all others whom he represents, 24 O. S. 232.

23. Where the plaintiff in an action to enjoin an assessment admits part of it to be legally due, he must pay or tender such part, as a condition to an injunction against the remainder, 16 O. S. 614; 3 O. C. C. 493.

A First and Final Estimate.

Office of the City Civil Engineer, ———, ———, 18—.

To the Common Council of the City of———:

I hereby make a report of a first and final assessment in favor of ———, for work done in the improvement of ——— street from ——— to ———, as heretofore ordered by your honorable body, viz.:

Owners' Names.	Description.	Number of			Addition or Sub-Division.	Feet	Inches	Total Assessment for .....
						For		
		Lot.	Square.	Out-lot				Dollars	Cts.
.....	.....	.....	.....	.....	.....	.....	....	.....	....
.....	.....	.....	.....	.....	.....	.....	....	.....	....
.....	.....	.....	.....	.....	.....	.....	....	.....	....
.....	.....	.....	.....	.....	.....	.....	....	.....	....
Total, ...						.....	....	.....	....

I hereby certify that the above estimate is correct.

City Civil Engineer.

Estimate Resolution.

Resolved, by the common council of the city of ———, That the estimate of the city civil engineer, in favor of ———, contractor for the ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ——— ———, pursuant to a resolution adopted ———, 18—, be and the same is hereby approved and allowed [*or*, amended as follows: ——— ———]. That the assessments set forth in said final estimate [as so altered and amended] are hereby approved and confirmed; and there is hereby assessed against the several lots, and parcels of ground, as described in said estimate, the several amounts set opposite and assessed against said several lots and parcels of ground therein described, respectively, for and on account of said improvement.

The city clerk is hereby directed to issue to said ——— a certified copy of said estimate.

Clerk's Certified Copy of Estimate.

A FIRST AND FINAL ESTIMATE ALLOWED.

Office of the City Clerk, ———, ———, 18—.

Owners' Names.	Description.	Number of			Addition or Sub-Division.	Feet | Inches For		Total Assessment for	
		Lot.	Square.	Out-lot				Dollars	Cts.
.....	.....	.....	.....	.....	.....	.....	....	.....	....
.....	.....	.....	.....	.....	.....	.....	....	.....	....
.....	.....	.....	.....	.....	.....	.....	....	.....	....
.....	.....	.....	.....	.....	.....	.....	....	.....	....
		Total, ...				.....	....	.....	....

I hereby certify that the above estimate is correct, and was approved by the common council of said city, on the ——— day of ———, 18—.

City Clerk.

Sec. 3165. Payment, how enforced. 71. In case any of the owners of lots or parcels of ground on which such assessments have been made shall fail or refuse, for the space of twenty days after the date of the estimate, to pay the amount thereof due by such person to such contractor, such contractor shall file his affidavit in the clerk's office of said city, stating that the whole or some part of said assessment remains unpaid, showing the amount paid and the amount due; that the estimate thereof has been duly made, and that the work estimated has been done according to contract. It shall be the duty of the clerk, at the next or any subsequent meeting of the common council, to report the said affidavit to the council, whose duty it shall be to cause a precept to issue for the collection of such assessment, or any unpaid balance thereof; which precept shall be signed by the mayor and attested by the clerk, and sealed with the seal of said city, and shall set forth the name of the person against whom the assessment is made; the description of the lot or land on which it is made; the amount of such assessment; and the date of the estimate; which shall be directed to the treasurer of such city, commanding him to make such assessment, or unpaid balance thereof, within ten days after receiving such precept, of the owner in whose name such assessment is made; which precept the clerk shall forthwith deliver to the treasurer, who shall serve the same by reading the same, personally, to such owner, or by leaving a copy of such precept at his last or usual place of residence; or, if such owner be unknown, or not a resident of

such city, then by publication for three successive weeks in a weekly newspaper printed and published in the city, briefly setting forth the facts of the estimate, the amount due, that the work has been done as contracted, the name of the person whose property is to be sold, the description of the property, and the date of the order of said precept by the said council, and giving notice that if such assessment be not paid within twenty days after publication, he will proceed to make the same by levy and sale of the lot or land whereon the same is assessed. Any owner of land, or his representatives, aggrieved by such precept, may appeal therefrom, within twenty days after such demand or publication, to the circuit court of the county wherein such city is situated, upon filing sufficient bond with the clerk of said city, conditioned for the payment of whatever judgment may be rendered against such appellant in said court; and such appeal shall stay all proceedings by such treasurer. And the trial of such appeal shall be conducted as other trials of civil causes are conducted in said court: *Provided*, That no question of fact shall be tried which may arise prior to the making of the contract for the said improvement under the order of the council. The clerk shall, upon the filing of said bond, forthwith make out and certify, under his hand and official seal, a true and complete copy of all papers connected in any way with the said street improvement, beginning with the order of the council directing the work to be done and contracted for, and including all notices, precepts, orders of council, bonds, and other papers filed in said matter; which transcript shall be in the nature of a complaint, and to which the appellant shall answer upon rule. And in case the court and jury shall find, upon trial, that the proceedings of said officers, subsequent to said order directing the work to be done, are regular; that a contract has been made; that the work has been done, in whole or in part, according to the contract; and that the estimate has been properly made thereon,—then said court shall direct the said property to be sold and conveyed by the sheriff thereof, as the said treasurer is hereinafter directed to sell and convey property liable to street improvements: *Provided*, That nothing herein shall be so construed as to prevent any person from obtaining an injunction upon the proceedings prior to the making of any such improvements. If no such appeal shall have been taken as aforesaid, it shall be the duty of such treasurer, within ten days after the expiration of said twenty days, to levy said precept upon the lot or land therein described, and to sell the same, or so much thereof as may be necessary to pay such assessment with costs and charges. But before any such sale, he shall give notice of the time and place thereof, by advertising the same for three weeks successively in a newspaper printed and published nearest to such lot or land, if any such be printed and published within the county wherein such city is situated, and by posting up written or printed notices thereof in at least three public places in said city. And every such sale shall

be by public auction, and upon or near the premises or in the city court-room of said city, in the discretion of said treasurer. And no sale of said lot or land previous or subsequent to the date of such estimate, and subsequent to the date of such petition or determination of the common council to make such improvement without petition, shall invalidate or affect any sale thereof in pursuance of this act. Upon the sale of any lot or land by virtue of such precept, and the payment of the purchase-money, the treasurer (or, in case of his death or going out of office, his successor) shall execute, acknowledge, and deliver to the purchaser a certificate of conveyance for the premises; which shall be valid and effectual to convey all the right, title, and interest of any such owner or purchaser from him as aforesaid, except as hereinafter provided, and shall be *prima facie* evidence of all the facts recited therein. In case the purchaser of any real estate under a precept, as aforesaid, having paid the purchase-money therefor, shall die before a certificate of conveyance, as herein provided, shall have been executed to him, the treasurer shall convey the same to the heirs or devisees of such deceased purchaser. The proceeds of any such sale shall be applied as follows, to wit: *Firstly*, To the payment of such assessment, with interest thereon from the date of such estimate, and all costs accrued thereon by reason of said sale; and, *Secondly*, The residue of such proceeds shall be paid to the owner, or his or her heirs or representatives, of such real estate, or, if unknown, it shall be paid into the city treasury; and such city shall at all times be responsible to such owner, heirs, or representatives for such residue. The purchaser under such precept shall hold such real estate subject to the lien of the unpaid part of its proportion of the whole cost of the improvement. The treasurer shall be entitled to a commission of five per cent. on the first hundred dollars, and three per cent. on any excess above that sum; but when the money is paid to him without sale, one-half commission only shall be received by him. For levying on the real estate and advertising the same, he shall receive one dollar; for personal demand for payment, twenty-five cents; for return of the precept, with his doings thereon, one dollar; for making certificate on sale of real estate, one dollar. He shall indorse on said precept the time of receiving the same, and, within three months thereafter, he shall make return thereof to the clerk, with his proceedings thereon. Any purchaser failing to pay the purchase-money shall be subject to the like penalties and proceedings as purchasers at sheriff's sale are by the laws of this State. The owner of any lot or land sold as aforesaid, or his agent or attorney, heirs or representatives, may redeem the same at any time within one year after the day of sale, by paying to the purchaser, or to the city treasurer for the use of the said purchaser, or his heirs or assigns, the sum mentioned in his certificate and the amount of all subsequent assessments paid by the purchaser, with fifty per cent. on the whole sum, and interest from date of purchase or time

of payment: *Provided*, That infants, idiots, insane persons, and *femes covert* may redeem any such lot or land belonging to them, sold for assessment as aforesaid, within one year from expiration of such disability. Claimants of a part of such land, or of any undivided part of the same, may redeem the whole as other owners may redeem. If such owner, or any person on his behalf, shall fail to redeem such land within one year as aforesaid, at the expiration thereof, and on production of the certificate of purchase, the treasurer shall execute to the purchaser, his heirs or assigns, in the name of the city, a conveyance of the real estate so sold; which shall vest in the grantee an absolute estate in fee-simple, subject, however, to all claims which the city may have thereon for assessments or liens or [other] incumbrances. Such certificate and final conveyance shall resemble, as nearly as may be, the certificate and conveyance for tax sales, and be *prima facie* evidence of all the facts recited therein.

This section is *constitutional*, not falling within the clause prohibiting special legislation regulating the practice in the courts, 41 Ind. 406. For *satisfying records* where land is sold, see § 3229*i*.

2 This section was *not repealed* by § 3165*a*, but only modified so far as to require that assessments against *unplatted* lands must be enforced by proceedings in the circuit court, instead of by precept issued to the city treasurer; for the enforcement of assessments against platted lands within the city limits, a precept must be still issued, 114 Ind. 246. See 108 Ind. 189. The right of appeal from the apportionment of costs, under § 3163, is reserved by this section, 90 Ind. 567.

3. There is no *personal liability* upon a street assessment. See 41 Ind. 406; 16 Ind. 215; 109 Ind., p. 350; unless the land-owner appeals and judgment is rendered against him, 109 Ind. 347.

4. The right to collect his claim can not be taken away from a contractor, 29 Ind. 329.

5. Until an *affidavit* is filed, no precept can be issued, and if issued it is void; and on appeal, if the transcript shows an insufficient affidavit, it is bad on demurrer, 114 Ind. 397 "The affidavits authorize the precept as a judgment authorizes an execution," 52 Ind. 411. It must embody, in a substantial manner, all the requirements of the statute, 114 Ind. 397; 40 Ind. 235; 41 Ind. 221; and aver that the estimate was "duly made," 33 Ind. 442. It should show the amount for which each lot is liable, although the different lots belong to the same owner, 40 Ind. 235. Where a new assessment was made because the first was defective it was held that if the old did not conform to the new assessment, a new affidavit was necessary, 40 Ind. 235. The affidavit can not be *amended* on appeal, but the proceedings may be commenced again by the filing of a new affidavit, 40 Ind. 235.

6. *Partial estimates* need not be included in the transcript; and if a complete and corrected estimate of the cost has been made and adopted by the council, instead of the partial estimates made during the progress of the work, the omission of such partial estimates from the transcript does not render it insufficient, 65 Ind. 421; nor is the final estimate affected by a previous order refusing to make an estimate, 109 Ind. 227.

7. *Without* an *estimate* a *precept* is *void*, and may be *enjoined*, 92 Ind. 200. But questions as to the taking of the "yeas" and "nays" on the passage of the ordinance, as to the amount of the estimate and as to a mistake in describing the property, can not be presented on a complaint for an *injunction*, 109 Ind. 347.

8. *Standing by*, and seeing the work completed and accepted, will preclude any one insisting that it is not done according to contract, or that the material used was not such as the contract called for. In such an instance the person

desiring to object must proceed by injunction before the acceptance of the work, and must tender to the contractor the value of the improvement as completed, 34 Ind. 36. Standing by and seeing the work done will be an estoppel, 29 Ind. 329; 30 Ind. 192; 118 Ind. 275; 122 Ind. 167. See § 3164, *notes* 13 *and* 21.

9. "The law does not require a *literal* and *exact* performance of the work according to the contract, but it does require a substantial compliance with the contract," 42 Ind., p. 140; 22 Ind. 491.

10. *Mandate* lies to compel the issuance of a precept, even where there is a controversy over the amount due, 29 Ind. 99; 43 Ind. 347.

11. The *plans and specifications* of the engineer are admissible as evidence in the suit to collect the assessment, 109 Ind. 227.

12. If the work is completed by two *joint contractors*, and *one die* after assessment made, the *precept* issues in the name of both upon the affidavit of the survivor, 90 Ind. 567; and in any event, where there are joint contractors, the affidavit of one is enough, 118 Ind. 275.

13. The notice of sale is a publication for twenty-one days, and not simply three insertions in a weekly newspaper, 56 Ind. 253.

14. The doctrine of *caveat emptor* applies as fully to sales of property for street improvements as to any other analagous sales, 110 Ind. 259; nor is the city concluded by a recital in the deed that the lands were legally liable to an assessment, 110 Ind. 259.

15. There is no statute authorizing the *refunding* of *money* voluntarily paid upon an erroneous or irregular street improvement, or even upon a wrongful assessment, 110 Ind. 259.

16. The *recitals* in a *deed* may be shown to be untrue, and thereafter the courts will so treat them, 81 Ind. 495.

17. The clerk can not issue a precept *without an order* of the council; and if he does it is void, and may be enjoined, 81 Ind. 495. So a sale where the affidavit shows that *nothing* is *due*, is void, 38 Ind. 442.

18. Mere *irregularities* on the proceedings can not be tried upon an *injunction*, but only questions as to the power and jurisdiction of the council, 109 Ind. 347; nor will the proceedings be enjoined because of trespass on adjoining land, 30 Ind. 414.

19. A sale of *two* or more *lots* assessed *jointly* and belonging to the same person is not void, but only *voidable;* and a sale thereunder, where no steps are taken previous to the sale to correct the error, is valid. In such an instance the *precept* can be *amended* by the assessment and affidavits, 52 Ind. 411.

20. The precept should contain a *description* of the *property*, which should correspond with that described in the estimate and in the affidavit, 48 Ind. 116; and parol evidence is not admissible to show that only one lot was affected where the description in the affidavit or precept and the estimate are different, 81 Ind. 495.

21. The *precept* must be *signed* by the mayor; and is void if not, or if signed by the acting president of the council, 32 Ind. 140.

22. A *void precept* and assessment may be *enjoined*, 34 Ind. 140; 92 Ind. 200; 81 Ind. 495; and it was said that it can not be appealed from, 52 Ind. p. 418, but this is very doubtful.

23. On appeal the *transcript* stands as a *complaint*, and is subject to a *demurrer*, 65 Ind. 421; but, although irregularities or errors may be disclosed by the transcript, a demurrer will not lie, unless the errors or irregularities affirmatively appear to have occurred after the contract was entered into with the city, 121 Ind. 534; 122 Ind. 167. If there is any defense, except a jurisdictional one, it must be made by way of answer, in order to give the contractor an opportunity to avoid it, if he can, by way of reply, 121 Ind. 534.

24. If anything is *omitted*, or erroneously stated, from or in the transcript on an appeal, a motion lies in the circuit court for a *certiorari* upon, or order against the city clerk to supply the omission, 65 Ind. 421; 29 Ind. 329; 40 Ind. 235; and if all the proceedings have not been entered in the records of the council, a *nunc*

pro tunc entry may be therein made upon motion, and the record as corrected certified to the circuit court, 118 Ind. 275; 17 Ind. 318; 41 Ind. 218.

25. On appeal *no question* of fact can be tried which may arise *prior to the making of the contract.* "If any irregularities occur prior to that act, they must be taken advantage of by an *injunction* suit before the work is performed. By omitting thus to proceed, the party waives objection up to the making of the contract," 17 Ind. 175; 22 Ind. 491; 30 Ind. 192; 65 Ind. 421; 62 Ind. 57; 114 Ind. 200, 397; 109 Ind. 227; 118 Ind. 275; 121 Ind. 534 (overruling 38 Ind. 198, 233, and 45 Ind. 438); but see 42 Ind. 134. The clause thus limiting the inquiry is constitutional, 22 Ind. 491; 121 Ind. 534. Thus it is not competent for the circuit court to inquire whether the petitioners for the improvement were residents of the city, or whether the petition had been signed by the requisite number of persons owning property on the street, or whether two-thirds of the councilmen concurred in making the improvement without petition; or whether the contractor was the lowest and best bidder; or into any other fact which arose before the making of the contract, 22 Ind. 491; not even the insufficiency of the advertisement for bids, 52 Ind. 411; 114 Ind. 200, 397; 109 Ind. 227. So it can not be shown that the place improved is not a street, 29 Ind. 329; 65 Ind. 421; the presumption being that the place improved was a regularly laid out or dedicated street, 34 Ind. 497; nor that the land-owner was entitled to the surplus earth, 118 Ind. 275; 121 Ind. 534. But if the transcript *upon its face* shows a defect, and not a mere irregularity, prior to the making of the contract, that may be raised by a demurrer it has been held (but this can not now be done, probably, 121 Ind. 534); see 38 Ind. 233; 20 Ind. 315; 19 Ind. 135; as the absence of an advertisement, 45 Ind. 438; lack of quorum, 38 Ind. 198; 41 Ind. 406; or bids, 38 Ind. 198; or contract, 17 Ind. 318. So if there be a total lack of proceedings prior to the contract, any one not estopped by his conduct or silence may proceed to enjoin the collection, 38 Ind. p. 241; 121 Ind. 534; and so if it shows affirmatively that the requisite number of councilmen did not vote for the proposed improvement, 20 Ind. 315; 38 Ind. 198; 40 Ind. 310; but not a remonstrance, 41 Ind. 406; nor partial estimates, 65 Ind. 422.

27. If the appellate court holds the proceedings back to a certain point void or irregular, and reverses them, the contractor may *begin anew* with that point and proceed to the collection; but if the proceedings are held valid on the land-owner's appeal, he can not insist that a new precept be taken out, nor can the contractor do so; but he has a right to an *execution* on such judgment, 109 Ind. 347. In the latter instance *all questions* before the court are *settled;* including the validity of the estimate and the sufficiency of the description, 109 Ind. 347.

28. The *contractor* must *take notice* and ascertain at his peril that *all* necessary *steps* have been taken to fasten liability on the land improved, 16 Ind. 227; 42 Ind. 107; for under no event can the city be held liable except for street and alley crossings, 16 Ind. 227; 13 Ind. 245.

29. *Nul tiel* record is not a good plea on appeal, 52 Ind. 411.

30. On appeal from the precept the contractor is *plaintiff*, and the *appeal bond* is payable to him, 42 Ind. 115.

31. Under a *general denial* the contractor must show that all proceedings subsequent to the order directing the work have been regular, or at least subsequent to the letting of the contract, there being some confusion in the cases on this point, 41 Ind. 221; 121 Ind. 534; but the incorrectness of an estimate can not be shown without an answer, the court presuming that the council and city engineer did their duty, 118 Ind. 275; 121 Ind. 534.

32. *Costs* which accrue on appeal are adjudged against the losing party personally; but the costs of making the sale are paid out of the proceeds of the sale of the property, 41 Ind. 406.

33. The *only questions* that can be *tried on appeal* are that the work, in whole or in part, has been done according to the contract, that estimate thereon has been properly made, a proper affidavit filed, and precept ordered, 30 Ind. 192; 121 Ind. 534.

34. An *appeal* must be taken *within twenty days* after demand by the treasurer, or after the last day of publication; but if a *precept* is *abandoned* by the council, and upon a new order a second one issues, the time within which an

appeal must be computed is from the time of service of the second precept, 28 Ind. 278.

35. The city may require the contractor to give a *bond;* and the fact that a school trustee of the city is the sole surety on the bond, signing it as an individual, does not avoid it, 122 Ind. 167.

36. An action to *quiet title* to the land sold or assessed, lies, but no question *prior* to the making of the *contract*, in such an action, can be tried. But in such an action the court may correct an error of the city civil engineer in estimating the work done under the contract, and assessable against the lot, and other *irregularities* occurring subsequently to the making of the contract, and and set the sale aside; and having ascertained the amount due, may adjudge it a lien on the land and order it sold, 122 Ind. 167.

37. In a *collateral attack* upon the right of the city to enforce its assessments, *every presumption* will be taken in favor of the action of the city and its officers, and unless the complaint discloses a state of facts which show clearly that the assessments are void, the right to enforce their collection will be presumed, 121 Ind. 331.

38. In the case of a sewer, the city paid the cost of the improvement, and then had *precepts* issued in its own name, and this was held a valid proceeding, 121 Ind. 331.

39. *Lien* for an assessment, made after land has been sold, has priority over purchase money mortgage, 3 Bull. 272; 6 Rec. 687; 2 Cow. 118; it takes precedence to any lien with which the owner may charge his land, 73 Mo. 507.

40. The property subject to the lien is determined by the situation thereof at the time of the estimate, § 3164, *note* 11; and is not affected by subsequent changes of title, 29 Ohi. St. 165; 36 Cal. 83.

Affidavit for Precept.

State of Indiana, ——— *County*, *ss.*

Before me, ———, a notary public in and for the county and State aforesaid, personally appeared ———, and, being duly sworn, upon his oath says, that heretofore, to wit: On the ——— day of ———, an estimate was duly allowed and certified to —— by ———, city civil engineer of the city of ———, for work done by —— under —— certain contract with said city for ———.

That by said estimate it appears that the sum of ——— dollars and ——— cents is assessed against ———, city of ———, ——— county, Indiana, owned by ———, of which sum ——— dollars and ——— cents has been paid, and there now remains due and unpaid the sum of ——— dollars and ——— cents. That the work estimated has been done according to contract, and the said estimate has been duly made in accordance with an order from the common council of the city of ———.

_____

_____

Sworn and subscribed to before me, this ——— day of ———, A. D. 18—.

_____

Notary Public.

Precept issued and delivered to the sheriff of ——— county, the ——— day of ———, 18—.

_____

City Clerk.

Journal Entry.

Whereas, ——— has filed an affidavit showing that there is still due upon lot ———, of ——— addition to the city of ———, in the name of ———,

for work performed in the improvement of ——— street, upon which said lot abuts, according to a resolution of this council adopted on the ——— day of ———, 18—, and the contract of said ——— with the city for the improvement of said street; it is therefore ordered that a precept be issued upon said affidavit for the collection of said amount now so due.

Precept.

State of Indiana, ——— *County, ss:*

The City of ———, *to* ———, *Treasurer of said City:*

Whereas, It appears by the affidavit of ———, duly certified and filed with the clerk of said city, that an estimate for work done by said ———, under ——— certain contract with the said city for the ———, was, on the ——— day of ———, 18—, duly allowed and certified to ——— by the city civil engineer of said city, by which said estimate it appears that the sum of ——— dollars and ——— cents is due to the said ——— from ———, being the amount assessed against ——— owned by said ———.

And whereas, It further appears by the said affidavit that the work estimated has been done according to contract, and that said estimate was duly made; that there has been ——— dollars and ——— cents paid thereon, and that there now remains unpaid the sum of ——— dollars and ——— cents, so assessed as aforesaid, and that said sum is still due and unpaid.

Now, therefore, you are hereby commanded to make said sum of ——— dollars and ——— cents, by demanding payment thereof from the said ———, and in default of payment thereof within twenty days after such demand, that you within ten days after the expiration of twenty days, lay this precept upon the premises hereinbefore described, and sell the same, or a sufficient part thereof to satisfy said assessment and costs of this writ; and of your proceedings herein, and of this writ, make due return to the clerk of said city within three months next hereafter.

Witness my hand and the corporate seal of the city of ———, this ——— day of———, A. D. 18—.

———————————
Mayor.

Attest:

———————————
City Clerk.

[City Seal.]

INDORSEMENT.

PRECEPT.

.....

.....

.....

Rec'd for col.....

Demand.....

Publication	.....$
Demand	.....
Levy	.....
Certificate	.....
Return	.....
Advertisement	.....
Per cent. for collecting	.....
Claim	.....
Interest on Claim	.....
Issue and notary fee	.....
	.....$

Received of.....city treasurer,.....dollars, in full of the within precept.

Indianapolis,.....18..

.....

I return the within precept made by .....dollars,

Paid.....

as per his receipt above.

Paid the city for printing....dollars.

Paid the clerk for issue and notary fee.....

The balance I have kept as my fees in the case.

.....

City Treasurer.

Indianapolis,.....18..

Notice to Non-Resident.

Notice is hereby given to whomsoever it may concern, that upon the ——— day of ———, 18—, the common council of the city of ———, Indiana, ordered that ——— street, from ——— to ———, be improved at the expense of the lots abutting thereon, and advertised for bids therefor; that in pursuance of said advertisement ——— bid for the same and the contract therefor was awarded to him by said council on the ——— day of ———, 18—; that in pursuance of said contract he has performed said work; that the civil engineer of said city made a final estimate and apportionment of the cost thereof and reported the same to said council on ——— day of ———, 18—, which estimate was approved and accepted by said council by resolution duly entered of record; that upon the ——— day of ———, 18—, said ——— filed his affidavit in the clerk's office of said city, showing that there is due upon the following lot, owned by ———, the sum of ——— dollars and ——— cents, viz.: lot ——— of ——— addition to the city of ———, Indiana; and thereupon, on the ——— day of ———, 18—, said council ordered that a precept be issued against said lot for the collection of said sum of ——— dollars and ——— cents; which precept, in pursuance of said order, was issued and delivered to me on the ——— day of ———, 18—. Notice is, therefore, hereby given that if said sum of ——— dollars and ——— cents be not paid within twenty days from the ——— day of ———, 18—, I will proceed to make the same by levy and sale of said lot.

———
Treasurer of the City of ———.

Sale for Street Improvement.

By virtue of a certain precept to me directed by the mayor of the city of ———, Indiana, and duly attested by the clerk of said city, under the corporate seal of said city, I will on Saturday, ———, 18—, sell, at public auction, at the city court-room, between the hours of 10 o'clock a. m. and 4 o'clock p. m. of said day, the following described lot, or parcel of land, or so much thereof as may be necessary to satisfy the sum hereinafter named as assessed against said premises for street improvement and all costs, to wit: Lot ———, in the city of ———, ——— county, Indiana, owned by ———, against which is assessed the sum of ——— for street improvement, in favor of ———, contractor.

———
City Treasurer.

———, Ind., ———, 18—.

Certificate of Sale.

City of ———, *Treasurer's Office*, ———, 18—.

I, ———, treasurer of the city of ———, in the county of ———, and State of Indiana, do hereby certify that, pursuant to an act of the general assembly of the State of Indiana, entitled "An act to amend an act, entitled 'An act to repeal all general laws now in force, for the incorporation of cities, prescribe their powers and rights, and the manner in which they shall exercise the same, and to regulate such other matters as properly pertain thereto,'" approved March 14, 1867, I did, on the ——— day of ———, A. D. 18—, offer for sale at public auction, in the city court-room of said city, the smallest part of the following real estate, to wit: That any one would take and pay the sum of ——— dollars and ——— cents, being the amount assessed against said premises as the property for street improvement and the costs of this proceeding, and having no bid or offer for any part of said real estate less than the whole, did then and there, in manner aforesaid, sell the same, to wit: ——— ———, in the city of ———, ——— county, Indiana, to ——— for the sum of ——— dollars and ——— cents, to me at the time in hand paid, that being the highest and best price then and there offered for the same.

Now this is to certify, That the said ———, his heirs or assigns, will be en-

titled to receive a deed for said above described premises, at the expiration of one year from the said ——— day of ———, A. D. 18—, unless the owner thereof, or his proper representative, shall, on or before said day, redeem the same, according to the provisions of the act aforesaid.

In witness whereof, I have hereunto set my hand, this ——— day of ———, 18—.

———
Treasurer of the City of ———.

State of Indiana, ——— *County, ss:*

Before me, ———, a notary public within and for said county, personally came the above named ———, treasurer of the city of ———, and acknowledged the execution of the above and foregoing certificate for the uses and purposes therein mentioned.

Witness my hand and notarial seal, at ———, this ——— day of ——— 18—.

———

Assignment.

———, Ind., ———, 18—.

For value received, The within certificate is hereby assigned and transferred to ——— ———.

———

State of Indiana, ——— *County, ss:*

Personally appeared before the undersigned, a notary public, this ——— day of ———, 18—, the above named ———, and acknowledged the foregoing assignment to be his act and deed.

Witness my hand and notarial seal.

———
Notary Public.

———

DUP. NO. ——.

CERTIFICATE OF SALE
—FOR—
STREET ASSESSMENT.

Lot .....

Sold .....

Owned by .....

Sold to .....

Amount sold for, ... $.....

Rec. on page....., Vol. No.....

Deed.

Whereas, ——— did, on the ——— day of ———, 18—, produce to the undersigned ———, treasurer of the city of ———, a certificate of purchase in writing, bearing date the ——— day of ———, 18—, signed by ———, who, at the last

mentioned date, was the treasurer of said city, from which it appears that the said ——— did, on the ——— day of ———, 18—, purchase at public auction, in the city court-room of said city of ———, the tract, parcel, or lot of land lastly in this indenture described, and which lot was sold to ——— for the sum of ———, being the amount due on the following tracts or lots of land returned delinquent in the name of ———, for the non-payment of an assessment for street improvements, made by the common council of said city against said lot or parcel of land, on the ——— day of ———, 18—, viz.: ———, which said lands had been returned among other tracts in the office of the city clerk as delinquent for the non-payment of the street assessment aforesaid.

And whereas, the common council of said city on the ——— day of ———, 18—, caused a precept to issue for the collection of such assessment directed to the treasurer of said city, commanding him to make such assessment according to law, which said precept came to the hands of said treasurer on the ——— day of ———, 18—, and said treasurer not being able to make or collect such assessment as in said precept otherwise commanded on the ——— day of ———, 18—, laid said precept on said tract or parcel of land hereinbefore described, and having advertised the same for sale, according to law, did, on the said ——— day of ———, 18—, sell the lot or parcel of land hereinafter described, to the said ———, as aforesaid, for the sum aforesaid.

And whereas, ———

And it appearing that the said ——— is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, and none of the saving clauses of the 69th section of chapter XV., of the laws of the State of Indiana of 1867, applying to this tract or parcel of land, and neither the said ———, nor any person in his behalf, having paid or tendered the amount due the said ——— on account of the aforesaid purchase; and the said ——— having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract first above described that would sell for the amount due thereon for the assessment, costs and charges as above specified; and it appearing from the records of said common council of said city, in the city clerk's office, that the aforesaid lands were legally liable for such assessment, and had been duly assessed and properly charged on the records of said common council, with the street improvements aforesaid.

Therefore, this indenture, made this ——— day of ———, 18—, between the city of ———, by ———, the treasurer, and ———, the mayor of said city, of the first part, and ———, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns forever, the tract or parcel of land mentioned in said certificate, as described as follows, viz.: ———, to have and to hold the said last mentioned tract or parcel of land, with the appurtenances thereunto belonging, to the said party of the second part, his heirs and assigns forever; in as full and ample a manner as the said treasurer of said city is empowered to sell the same.

In testimony whereof, the said ———, treasurer, and ———, mayor of said city, hereunto set their hands and affix the seal of said city the day and year last above written.

_____

Treasurer of the City of ———.

_____

Mayor of the City of ———.

State of Indiana, ——— *County.*

Before me, the undersigned, a ——— in and for said county, this day personally came the above named ———, treasurer, and ———, mayor of the city of ———, and acknowledged that they signed and sealed the foregoing deed, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and ——— seal this ——— day of ———, 18—.

_____

STREET IMPROVEMENT DEED.

City of .....

To .....

CERTIFICATE OF SALE,

For Street Assessment.

Lot, ...

Sold, ...

Owned by .....

Sold to .....

Received for record this ..... day of .....A. D. 18....

at .....o'clock.....M., and recorded in Deed Record of town lots, No....., page.....

.....

Recorder ——— County.

Duly entered for taxation this..... day of .....18....

.....

Auditor.

Appeal Bond.

We, ——— and ———, severally acknowledge ourselves bound unto ——— in the penal sum of ——— dollars. Witness our hands and seals this ——— day of ———, 18—.

Whereas said ——— has appealed from a precept issued on the ——— day of ———, 18—, by the city of ———, State of Indiana, against lot ——— of ——— addition to said city, owned by said ———, in favor of said ———, for the collection of the sum of ——— dollars: Now, if said ——— shall prosecute his appeal to final judgment, and pay such judgment as may be rendered against him on such appeal, this bond shall be void; else in force.

_____[Seal.]

_____[Seal.]

Taken and approved by me this ——— day of ———, 18—.

_____

Clerk of the City of ———.

Transcript.

Be it remembered, That the following proceedings were had and held before the common council of the city of ———, State of Indiana, at the times hereinafter stated, as appears from records thereof, viz.:

On the ——— day of ———, 18—, the following resolution was introduced, viz.:

[*Set out resolution for improvement,*]

which resolution was adopted, as appears from the following entry in Record ———, page ———.

[*Set out Journal entry.*]

In pursuance of said order of improvement the following notice was published in the *Daily Argus*, from the ——— day of ———, 18—, to the ——— day of ———, 18—, as appears from the affidavit hereinafter set out, viz.:

[*Set out notice and affidavit.*]

In pursuance of said notice the following bid was received by said common council on the ——— day of ———, 18—, viz.:

[*Set out bid of contractor,*]

which bid was accepted, as appears from the following entry in Record ———, on page ———, entered of record on the ——— day of ———, 18—, viz.:

[*Set out acceptance of bid,*]

whereupon the following contract and bond was executed by the said ———, viz.:

[*Set out the contract and bond.*]

On the ——— day of ———, 18—, the civil engineer of said city filed the following estimate, viz.:

[*Set out assessment,*]

which estimate was approved and adopted by said council on the ——— day of ———, 18—, as appears of record in Record ———, on page ———.

[*Set out Journal entry.*]

On the ——— day of ———, 18—, said ——— filed the following affidavit in the office of the clerk of said city, viz.:

[*Set out affidavit for precept,*]

and thereupon, on the ——— day of ———, 18—, the following proceedings were had before said council, as appears in Record ———, on page ———, viz.:

[*Set out order for precept.*]

In pursuance of said order the following precept was issued on the ——— day of ———, 18—, to the treasurer of said city, viz.:

[*Set out the precept.*]

which precept is indorsed as follows, viz.:

[*Set out the treasurer's indorsements of service.*]

Thereupon, on the ——— day of ———, 18—, said ——— filed the following appeal bond with the clerk of said city, viz.:

[*Set out appeal bond.*]

I, ———, clerk of the city of ———, State of Indiana, hereby certify that the above transcript contains true and complete copies of all papers in any way connected with the street improvement therein referred to, beginning with the order of the common council directing the work to be done and contracted for, and including all notices, the precept, order of council, bonds, and other papers filed in said matter.

In testimony whereof, I have hereunto set my hand, and the seal of said city, this ——— day of ———, 18—.

[City Seal.]

———

Clerk of the City of———.

[1885, p. 207. Approved and in force April 13, 1885.]

Sec. 3165*a*. Payment, how enforced on unplatted lands. 1. In all contracts heretofore made or which may be hereafter made by order and under the direction of the common council of any city in this State, for the grading, paving, guttering, and improvement of any street or alley in such city, the cost of such improvements shall be estimated according to the whole length of the street or alley, or the part thereof to be improved per running foot; and the city shall be liable to the contractor for so much thereof only as is occupied by public grounds of the city bordering thereon, and the crossings of streets and alleys; and the owners of lots bordering on such street or alley or the part thereof to be improved, shall be liable to the contractor for their proportion of the cost, in the ratio of the front lines of lots owned by them to the whole improved line; and in all cases where such improvement shall have been made, or may hereafter be made on any street or alley running along or through any unplatted lands lying within the corporate limits of such city, the cost of such improvements shall be estimated according to the whole length of the street or alley, or the part thereof to be improved per running foot, and the owners of such unplatted lands bordering on such street or alley or the part

thereof to be improved shall be liable to the contractor for their proportion of the cost, in the ratio of the front lines of such unplatted lands owned by them to the whole improved line; and in making the assessment against such owners for the improvement, such unplatted lands shall be assessed across the ground fronting or immediately abutting on such improvement back to the distance of one hundred and fifty feet from such front line, and the contractor shall have a lien thereon for the value of such improvement: *Provided, however,* That where such land is subdivided, the land lying immediately upon and adjacent to the line of the improvement shall be primarily liable to and for the whole cost of the improvement, and should that prove insufficient to pay such cost, then the second parcel and other parcels in their order to the rear parcel of said one hundred and fifty feet shall be liable in their order; and if the owners of such unplatted lands fail to pay for such improvements within sixty days after the completion of the same, such contractor may enforce his said lien in the circuit court of the county where such city is situated, and the court shall ascertain the value of such improvements according to the contract price therefor and render a judgment for the amount thereof against the owner of such lands, and direct that such lands, or so much as may be necessary, be sold by the sheriff upon an order of sale issued upon such judgment, without relief from valuation or appraisement laws, and the sheriff shall issue to the purchaser a certificate of sale therefor, which shall entitle the holder thereof, his heirs or assigns, to a deed therefor within one year from the date of such sale: *Provided,* That the owner of such lands may redeem from any such sale under the provisions of the law now in force concerning the redemption of lands sold upon execution and foreclosure of mortgages. [Acts 1885, p. 207; El. Suppl. § 753.]

1. This section *repealed* § 3163, with the exception of the proviso; and modified § 3165, so far as it authorizes the collection of an assessment upon *unplatted* land, 114 Ind. 246.

2. This section does not *enlarge* the *lien* of a contractor where the work was completed and a sale had prior to its passage, 118 Ind. 289.

3. Since ample opportunity is afforded for questioning the validity of the proceedings for the improvement and all matters respecting the legality of the amount assessed, in the enforcement of a lien in the circuit court, it would seem that the improvement of a street without notice, or any provisions for notice, will be upheld, 118 Ind. 261; 114 Ind. 429; 121 Ind. 534.

4. The power to make assessments is *strictly* construed, 118 Ind. 289. But now see 124 Ind. 292.

5. The proceeding to collect an assessment on unplatted lands is *analogous* to the proceeding to enforce a *drainage assessment* where the proceedings for a drain are instituted in the circuit court. Cases upon questions in enforcing such collections may, therefore, be cited.

6. The proceeding must be instituted *in the county* where the land lies, regardless of the residence of the owner, 106 Ind. 157. The *estimate* of the city engineer must be made an *exhibit*, as it is the basis of the action, 83 Ind. 520; 106 Ind. 228; 97 Ind. 389, 399; 98 Ind. 58, 599; or the complaint will be had on a *demurrer* for want of facts, 97 Ind. 389; 100 Ind. 487; 101 Ind. 321. It should be averred that the *estimate* was *adopted* and confirmed by the council and made

the assessment, 98 Ind. 58; but a copy of the *resolution confirming* it is not necessary, 95 Ind. 307. The *resolution ordering the work* need not be made a part of the complaint; and if it appears that it was passed by the requisite vote, it can not be attacked, 99 Ind. 113. Of course it need not be averred that the *defendant* was a *party* to the original proceedings; for it is not necessary that he should be in order to fasten a lien on his land; but it should be averred that a *resolution* was *duly adopted*. See 104 Ind. 516; 97 Ind. 23. A *demand* should be averred, 103 Ind. 250; 89 Ind. 368; 109 Ind. 236. From the making of the contract to the last act necessary to fasten liability on the defendant a *substantial compliance* therewith must be shown, 97 Ind. 23, 160; 121 Ind. 534. Thus, if it shows a resolution adopted by the requisite vote, the letting of the contract, at least a part performance, an estimate confirmed by the council, notice and demand of payment, it will be sufficient, 106 Ind. 228, 471; 109 Ind. 217; 89 Ind. 413; 108 Ind. 155; 110 Ind. 523. A complaint in *assumpsit* is not sufficient, unless it is averred that the defendant requested the plaintiff to perform the work, 82 Ind. 490; 87 Ind. 244; 89 Ind. 208. Whatever *question* could be raised *on appeal* from the assessment must be raised in that way; and it can not be raised in a proceeding to foreclose a lien, so long as it may be a *collateral attack* of the proceedings. See 105 Ind. 37; 88 Ind. 70. Thus it can not be shown that the *original petition* for improvements was *defective*, 100 Ind. 487. *Damages* caused by a negligent performance of the work can not be set up by way of counter-claims or set-off, 109 Ind. 217; nor can the *misconduct* of the city civil *engineer* be set up as a defense, 113 Ind. 532. A *default* does not admit the amount due; but only the material and traversable averments of the complaint, and that something is due, leaving the amount to be established by proof, 101 Ind. 355. The *sale* can not be attacked because of any alleged irregularity or alleged invalidity in the petition, resolution, estimate, or of any of the proceedings prior to the rendition of the judgment,—the *judgment* being *conclusive* upon all these points, (at least such is the rule in drainage proceedings,) 88 Ind. 142. The authority of the sheriff to sell the property upon which the lien is foreclosed, is a certified copy of the decree.

7. Where land abutting upon an improvement is not subdivided into lots, the council at the time of making the assessment should fix the frontage to the usual depth of lots in the neighborhood, 31 O. S. 371; 35 O. S. 620; *Id.* 435. If it does not, the collection of such assessment will be enjoined, without prejudice to the collection of the amount properly chargeable to the frontage, 34 O. S. 482, and the owner may be relieved by special act of the legislature, 35 O. S. 435. If a piece of land is severed by an improvement, each part should be separately assessed, although the whole remains on the duplicate as one lot, 35 O. S. 469; 43 O. S. 69; 29 O. S. 320. A paper plat may be obliterated, and the frontage of lots changed by permanent improvements, 16 Bull. 249. A plat approved after assessment is made can not be considered as fixing the depth of lots on an improvement, 2 Bull. 337. A statute passed between the making of the contract for an improvement and the assessment, which changes the per centum limitation, is invalid, so far as it interferes with the contract obligations of the corporation with its contractor, 27 O. S. 427; 2 C. S. C. R. 150. The law in force at the time the ordinance to improve is passed, governs the manner of assessment and the rights and liabilities of abutting owners, 46 O. S. 296; 3 O. C. C. 493.

Complaint.

A—— *B*—— *vs. C*—— *D*——. *No.*——.

A. B. complains of C. D. and says that on the ——— day of ——— 18—, the common council of the city of ———, State of Indiana, by a two-thirds vote of all its members [*or*, upon petition in writing presented to it signed by the owners of two-thirds of the whole line of lots and tracts of land bordering on the proposed improvement, by a vote of a majority of all its members] adopted a resolution ordering that Ohio street, from Tennessee street to New Jersey street, be graded and graveled with the best quality of raked, river or creek gravel to a depth of ten inches in the center and sloping gradually to a depth of four inches at each side, at the expense of the lots and tracts of land abutting thereon, the contract therefor being let to the lowest and best

bidder, after two weeks' notice thereof in the *Daily Argus;* that in pursuance of said order said notice was duly given by the clerk of said city as directed in said order, and the contract for the construction of said improvement was awarded to this plaintiff by said council, he being the lowest bidder therefor, and a contract entered into between him and said city; that in pursuance of said contract this plaintiff has improved said Ohio street between the said two streets named, in all respects complying with the resolution of improvement adopted by said council as aforesaid, and in all respects complying with his said contract; that the civil engineer of said city has estimated the cost of said improvement according to the whole length thereof per running foot, and on the ——— day of ———, 18—, reported the same to said council, a copy of which is filed herewith marked "Exhibit A," and made a part hereof; that on the ——— day of ———, 18—, said council, at a regular meeting thereof, approved and adopted said estimate, ordered that it be an assessment against the property abutting upon said improvement, and in all things accepted the work as performed by the plaintiff as a complete compliance with said resolution of improvement and as a complete compliance with said contract; that among other lots and tracts of land so assessed for said improvment and abutting thereon, was the following described unplatted tract, owned by said defendant, situate in the county of ———, and State of Indiana, viz.: [*Describe the tract by metes and bounds as described in the assessment.*] That said defendant, although so requested by the plaintiff, has failed to pay him the amount of said assessment although more than sixty days has elapsed since said assessment was made and since said improvement was completed.

Wherefore the plaintiff demands judgment for ——— dollars, the forclosure of the lien upon said tract of land; and prays for all other proper relief.

E——— F———,
Attorney for the Plaintiff.

ARTICLE 5—OPENING AND VACATION OF STREETS.

SEC.

3166. City commissioners.
3167. Proceedings in council.
3168. Duty of commissioners.
3169. Hearing and proceedings.
3170. Assessment of damages and benefits.
3171. Report.
3172. Report.
3173. Reports as to infants and insane.
3174. Action of council on report.
3175. Duty of clerk—Lien.
3176. Payment of damages.
3177. Collection of assessments.
3178. Report of collections.
3179. Private corporations.
3180. Appeal.
3181. No injunction.
3182. Payment of damages.
3183. Tendering damages—Injunction.
3184. Vacation of streets, etc.
3185. Proceedings of commissioners.
3186. Report.
3187. Action on report.
3188. Clerk's duty.
3189. Reference of report and proceedings.
3190. Change of street on petition of abutters.
3191. Removal of obstructions, etc.
3192. Plats.
3193. Pending proceedings.
3194. Compensation and damages.

[1875 S., p. 17. Approved and in force March 17, 1875.]

SEC. 3166. City commissioners. 1. There shall be appointed, once in each year, by the circuit court in the county wherein is situated any city of this State incorporated under the general act for the incorporation of cities, five freeholders, residents of said city, who shall constitute a body to be called city commissioners, and whose duty it shall be to hear and determine all matters appertaining to the acquisition, opening, laying out, altering, and straightening of streets, alleys, and highways within said city, and also to hear and determine all matters appertaining to the altering or straightening of streams within said city, and the taking of lands for sewerage purposes. Such commissioners shall serve for one

year and until their successors are elected and qualified; and, before entering upon the duties of their appointment, shall take an oath to faithfully and impartially discharge their duties as commissioners; which oath shall be indorsed upon their certificate of appointment. The city clerk shall, within three days after such appointment, issue to each commissioner a certificate of his appointment.

NECESSARY STEPS TO OPEN STREET.

The following are the steps in their order necessary to be taken:

1. *Commissioners.* The circuit court appoints five freeholders, residents of the city as city commissioners, § 3166.

2. *Reference to committee.* All proposals for opening a street must be referred to a standing committee, or to one appointed by the council or selected by the mayor, to report at the next meeting, upon the expediency of opening the street as proposed, and of referring it to the city commissioners, § 3167.

3. *Submission to city commissioners.* A two-thirds vote, by "yea" and "nay" is essential to the submission of the matter to the city commissioners, § 3167.

4. *Interested commissioners.* If three of the commissioners are interested in the opening of the street, the council appoints three commissioners *pro tempore*, § 3167.

5. *Notice to commissioners.* The city clerk sets a time and place for meeting of the commissioners in a notice issued by him, and served by the marshal fifteen days prior to the day set, § 3168.

6. *Meeting and report of commissioners.* They meet at the time and place designated, examine the property to be appropriated and to be benefited, and within ten days after making the examination, file with the clerk a report showing the property to be taken, the property damaged, and that benefited, with the owners' names if known, § 3168.

7. *Notice of assessment of benefits and damages.* At the time of filing their report, the commissioners file with it a notice when and where they will meet to assess the benefits and damages. The meeting is held not less than 50 nor more than 60 days from the time of filing the report and notice. The clerk then issues a written or printed notice to the land-owners named in the report, which the marshal serves at least ten days before the meeting. If the owner is unknown, can not be found, or is a non-resident of the county, three consecutive weeks' notice is given by the clerk, in a newspaper of the city, the last publication being 15 days prior to the date of the meeting, § 3168.

8. *Waiver of notice.* An appearance by an interested person before the commissioners is a waiver of all right to demand a notice.

9. *Hearing and proceedings.* At least a majority of the commissioners must meet at the time and place designated, view the ground, here evidence; and for the latter purpose may compel the attendance of witnesses by subpœna and fine, and administer oaths to them. They may require the services of the city civil engineer, § 3169.

10. *Assessment.* They assess all lands benefited and damaged, determining what part of the expense the city shall pay, § 3170.

11. *Report.* Within ten days after the investigation is finished, they must file a report with the city clerk, showing (1) the property to be appropriated and the owner's name if known; (2) the damages, where no part of the property is taken; (3) the property benefited, the amount of benefits, and the owner's name; (4) the general character and direction of the proposed improvement or change, as to length, direction and width; and (5) the amount the city must pay.

12. *Reports as to infants and insane.* As to these all notices are served on their guardians; if they have none, the commissioners so report to the circuit court, have a guardian appointed, and then proceed with the necessary steps, § 3173.

13. *Failure to notify.* If there should be a failure to notify an interested person, the failure only affects such person; and if he apply to the clerk, upon the latter's notice to them, they meet and assess his damages or benefits as the case requires, or affirm those already assessed, § 3173.

14. *Resolution of appropriation.* Within 28 days after filing the report the council must act upon it if they desire to make the appropriation; if they do not so desire, they may let the matter lapse by non-action thereon. The resolution must require the clerk to deliver a copy of that part of the report covering the assessment of benefits to the city treasurer, § 3174.

15. *Referring back the report.* During the 28 days immediately following the date of filing the report, the council may refer the report (or any report) back to the commissioners, § 3174, designating the time and place of meeting, with suggestions, and they shall meet and consider the whole matter. All persons interested must take notice of this meeting. Within 10 days after the examination is concluded they must make a second report, and the council must either approve or disapprove it within 28 days after it is filed with the clerk, § 3189.

16. *Record of report.* After delivering a copy to the treasurer, the clerk copies it at length into the council records, and preserves the original, § 3175.

17. *Payment of damages.* The council may at once pay all the damages, or delay the proceedings not to exceed a year until they are collected, § 3176. The treasurer pays the damages; and if two or more persons claim them, he notifies the city attorney to give the money to him, and the latter brings a suit to determine who is to get it, § 3182. If the owner can not be found, the treasurer keeps it as a special deposit, § 3183.

18. *Notice of collection.* Within 10 days after receipt of a copy of the assessment, the treasurer must notify those assessed with benefits, either in person or by a written notice left at their residence, or by publication if they are non-residents of the city or unknown, § 3177.

19. *Collection of assessments.* If an assessment is not paid within 3 months after service of notice, or 15 days after the last publication, the treasurer proceeds to collect the money due, the same as if he were collecting an assessment for the improvement of a street, but without a precept, § 3177. If the land is platted, he advertises and sells it, § 3165; if unplatted, by proceeding in the circuit court, § 3165*a*.

20. *Certificate of purchase and deed.* The certificate of purchase and deed is issued the same as if the assessment were for the improvement of the street, § 3165 and § 3165*a*.

21. *Report of collections.* The treasurer must report a collection made to the council at their regular meeting next after its receipt, § 3178.

22. *Collections from private corporations.* See procedure, § 3179.

23. *Appeal.* Any one aggrieved may appeal, within 30 days after the commissioners' report is approved, to the circuit court, by filing a bond; whereupon the city clerk files a transcript of all the proceedings in the circuit court, § 3180.

24. *Title to land appropriated.* The city gets a valid title (an easement) to the land appropriated, for the purposes of a street, free from all judgment or general liens, but not from mortgages.

25. *Pay of commissioners and clerk.* The commissioners should attach an item of the number of days they and their clerk were employed, and the council allows and pays the claim out of the city treasury. These costs are no part of the cost of opening the street.

26. *Maps or plat.* The city civil engineer prepares a plat of the new street and files it with the county recorder, § 3192.

27. This law is amendatory and supplementary to the general law concerning cities, 82 Ind. 178. Constitutional, 1 Ind. 48.

28. It is no cause for an injunction that the *oaths* were not endorsed by the commissioners, or even if none were administered, 78 Ind. 233.

29. The *presumption* is that a street has been legally laid out and opened, and that property owners damaged have had their damages adjusted and paid, 79 Ind. 446.

30. In the matter of local improvements *jurisdiction* is conferred on municipal corporations over the whole subject thereof, and the common councils of those corporations are invested with exclusive original jurisdiction. So one seeking to avoid an assessment for street improvement by collateral attack must show that the street was not acquired by condemnation, purchase, dedication, or prescription, 120 Ind. 520.

Order-Book Entry for Appointment.

On its own motion the court appointed A. B., C. D., E. F., G. H., and I. J. city commissioners for the city of ———, Indiana, for the year beginning on the ——— day of ———, 18—.

[*Certified copy should be given to city clerk.*]

Certificate of Appointment.

I, X. Y., clerk of the ——— circuit court, hereby certify that A. B. was, on the ——— day of ———, 18—, appointed by said court, city commissioner of the city of ———, Indiana, for the year beginning on the ——— day of———,18—, as appears of record entered in order book ———, on page ———.

In testimony whereof, I have hereunto set my hand and the seal of said court this ——— day of ———, 18—.

[Seal.]

X. Y.,
Clerk.

[A certificate should be given to each commissioner, for which the clerk is entitled to no fees.]

Oath.

State of Indiana, County of ———, *ss.*

I, A. B., do solemnly swear that I will faithfully discharge my duty as city commissioner of the city of ———, of the State of Indiana. So help me God.

A. B.

Subscribed and sworn to before me this ——— day of———, 18—.

[Notarial Seal]

L. X.,
Notary Public.

Sec. 3167. Proceedings in council. 26. Before any matter of the opening, laying out, or altering of any street, alley, highway, or water-course, or of the vacation thereof, shall be referred to the city commissioners, the common council shall refer the matter to an appropriate committee, who shall examine the matter, and report at the next meeting of the common council upon the expediency of so referring; and if the common council shall determine, by a two-thirds vote, to submit the said matter to the commissioners, it shall be so ordered, and shall thereupon be referred to said commissioners, as hereinbefore provided; but no such matter shall be submitted unless so ordered by a two-thirds vote of such common council. In case any commissioner shall be interested, he shall be incompetent; and in case a number are interested, so great as not to leave a majority competent, the council may ap-

point, at any regular meeting, commissioners *pro tempore*. Any person interested in such proceedings, or whose property is affected, may present his objections, and if the commissioners be found interested, commissioners *pro tempore* shall be appointed.

1. A commissioner *interested* in property to be assessed either with benefits or damages is incompetent to serve; so is one who is a father-in-law to a property owner affected by such proposed street. 99 Ind. 417. Section 240 of R. S., 1881, controls with reference to the question of kinship. 99 Ind. 417.

2. A property owner is not called upon to object to a commissioner serving until after the first report is filed; but, if served with notice, he must raise such objection before the assessment is made at the second meeting, and if he does not do so, he can not raise it in the circuit court on appeal; but if he has had no notice of the second meeting, the clear inference is that he may appeal, if he so desires, and raise the question of the competency of the objectionable commissioner by a sworn plea, § 3180; 99 Ind. p. 422. So if the objection is overruled or disregarded and not reported to the council, or if the council disregarded it, it may be renewed and tried on appeal; or if a party had no knowledge of the incompetency of a commissioner, before the assessment made, or has no opportunity to make it, he may raise it on appeal, 99 Ind. p. 422. Notice of an *adjourned meeting* need not be given, 78 Ind. 233; 6 Pick. 470; 12 Kas. 17.

3. In all things there must be a *substantial compliance* with the statute, in order to divest the land-owner of his title, 38 Ind. 223; 11 O. S. 219; 34 Mich. 36; 23 W. Va. 203; 16 La. Ann. 393; 33 N. J. L. 72; 78 Mo. 41; 10 Gray, 40.

4. If it is a proposition to open a new street entirely, its *location* must be specifically *defined* in the resolution, but if it is to vacate and change a street it is not necessary that the street be described by course and distance, or state "of what it consists," or "from or whence taken." It is enough if the location and extent of the proposed change be well stated, 82 Ind. 178.

5. A city *can not open or widen* a street *without referring* the matter to the city commissioners, to have the damages assessed in the manner prescribed by law; and if it does undertake it, without such reference, it will be liable to any person injured for the damages which were assessable by the commissioners, 120 Ind. 254.

6. The *particular purpose* for which the power of *eminent domain* shall be exercised rests entirely with the legislature, 4 O. S. 308; 98 U. S. 403; 116 Ill. 449; 58 Mo. 175. The power having been granted, the grantee is vested with the determination whether it shall be exercised, and when, and to what extent, within the power, 22 Minn. 372; 116 Ill. 449. Only on proof of fraud, or bad faith, or that the property is intended to be used for purposes other than that for which it is appropriated, will warrant the interference of the courts, 19 O. S. 308; 4 O. S. 299. Under the principle of strict construction, where the estate taken in is not defined, only such an interest can vest under the proceedings as are necessary to accomplish the purpose of the appropriation, 68 N. Y. 1, 591; 10 Kas. 603; 125 Mass. 226.

7. A city may appropriate the necessary easement for a slope for a fill, but the owner is not entitled to compensation as for the fee, 34 O. S. 267. Street or highway is a public use, although wholly to afford access to church or cemetery, 33 Ind. 80; 63 Pa. St. 471; and may accommodate but one family, 22 Vt. 44; 15 Ark. 43; 5 Gratt. 265; 61 Ia. 89; 64 Id. 198; and may be merely a *cul de sac*, 12 Kas. 17; 56 Wis. 429; 87 Ill. 189; 3 Keys, 35; and may be merely to accommodate pleasure-seekers; 11 Allen, 530; 35 N. H. 134.

8. The following uses of streets are held to be legitimate and not to require additional compensation; *for sewers and drains*, 21 O. S. 499; 2 C. S. C. R. 462; 30 Mich. 24; 13 Allen, 146; 28 Conn. 362; *for water-pipes*, 29 Hun. 245; 27 *Id.* 72; *for gas-pipes*, 90 N. Y. at p. 161; 32 Vt. 367; *for laying subterranean wires and setting poles and stringing wires for lighting by electricity*, 65 How. Pr. 407; 18 Jones & S. 464; 51 *Ib.* 280; *contra*, 9 Bull. 65; *for street railways*, 14 O. S. 524; 35 Cal. 325; 125 Mass. 515; *for setting poles for electric street railways*, 3 O. C. C. 425; *for cisterns for sprinkling streets and extinguishing fires*, 32 Vt. 367; *for statuary and monuments*, 2 Hun. 146.

9. The following are held to require compensation: *for telegraph and telephone lines*, 2 O. C. C. 259; 42 N. J. Eq. 141; 107 Ill. 507; 11 Abb. N. C. 440; *contra*, 136 Mass. 75; 88 Mo. 258; *for public markets*, 15 Fla. 306; 34 N. J. L. 201; 5 Porter (Ala.) 279; *for public pounds for strays or for jail*, 15 Fla. 306; 63 N. H. 605; *for railroads* 40 O. S. 496; 38 O. S. 41; 3 O. S. 330.

10. *Markets.* Property taken for, is for public use, 28 Hun. 515. But a street can not be used for, without compensation, 34 N. J. L. 201; illegal erection of, may be enjoined, 29 Alb. L. J. 201; 6 Bull. 142.

11. Under general authority to lay out streets, a municipality may extend them across the right of way of a *railroad*, 23 O. S. 510; 49 Mo. 480; but taken for an inconsistent use can only be justified under a grant in express words, or by necessary implication, 23 O. S. 510; 23 Pick. 360. General authority will not authorize taking the right of way of a railroad longitudinally, 123 Ind. 467; 68 Ind. 167; 53 Ind. 574; 103 Ind. 486; 26 N. E. Rep. 188; 36 Conn. 255; 39 N. J. L. 28; nor of laying the highway through depot grounds, 23 Minn. 167; 30 *Id.* 359; 91 N. Y. 552; or shops, 53 Ga. 120.

Resolution.

Be it ordained by the common council of the city of ———, that it is desirable to open a street from ——— to ———, within this city; and that the matter thereof [*or, in case of a petition*, that the matter of opening a street from ——— to ———] be referred to the committee on ——— [*or*, to a committee of three to be appointed by the mayor] to examine and report at the next meeting of this council upon the expediency of referring the proposed opening of such street to the city commissioners.

Report of Committee.

To the Common Council of the City of ———:

Your committee, to whom was referred the matter of opening a street from ——— to ———, within this city, with a view of examining and reporting upon the expediency of refering the same to the city commissioners of this city, report that in their opinion it is [not] expedient and desirable that the matter of opening such proposed street be referred to said city commissioners.

[Signed] _____

Resolution of Reference.

Be it ordained by the common council of the city of ———, that, in pursuance of the recommendation of the committee of ———, duly selected to examine and report upon the same, on the ——— day of———, 18—, the matter of opening a street from ——— to ———, within this city, be and the same is hereby referred to the city commissioners of this city; and that such commissioners be requested to meet on the ——— day of ———, 18—, at 10 a. m. for the purpose of examining the same.

Second Form of Resolution.

Resolved, by the common council of the city of ———, that the petition of ——— and others, praying for the opening and extension of ———, as prayed for in said petition, be referred to the board of city commissioners, with instructions to assess benefits and damages, and to make due report to the common council; the city commissioners to return all petitions, plats, and notices. The city clerk is hereby instructed to issue the proper notices, and the city marshal is hereby directed to serve said notices on said city commissioners and upon the property owners.

Provided, That before the clerk issue the said notices to the said city com-

missioners a bond shall be filed with the said city clerk to the approval of the mayor, guaranteeing the payment of all costs and charges of said commissioners in this matter.

Appointment of Commissioner pro tempore.

Whereas it is found that A. B., C. D., and E. F., each a city commissioner of this city, are so interested in the matter of opening a street from ——— to ———, within this city, that they are incapacitated to serve in said matter; therefore

Resolved, that R. U., T. S., and W. Z. be and are hereby appointed commissioners *pro tempore* to act in said matter, instead of such disqualified persons. The clerk is hereby directed to notify them of their appointment.

Notice of Appointment.

Office of City Clerk.

To R. U.:

You are hereby notified that on the ——— day of ———, 18—, you were appointed city commissioner *pro tempore* in the matter of opening a street from ——— to ———, within said city.

X. Y.,
Clerk of the City of ———.

Oath of Commissioner pro tempore.

State of Indiana, County of ———, *ss.*

I, R. U., do solemnly swear that I will faithfully and impartially discharge my duty as city commissioner *pro tempore* of the city of ———, of the State of Indiana. So help me God.

R. U.

Subscribed and sworn to before me, this ——— day of ———, 18—.

[Notarial Seal.] L. X.,
Notary Public.

Clerk's Notice to City Commissioners.

To A. B.:

You are hereby notified that the common council of the city of ——— have referred to the city commissioners of said city the matter of opening a street from ——— to ———, within said city; and have requested that they meet on the ——— day of ———, 18—, at 10 a. m., for the purpose of examining the same. You are, therefore, requested to meet the four other city commissioners at said time in the council chamber of said city.

L. U.,
City Clerk.

[Each commissioner is entitled to notice, unless one in his place has been appointed *pro tempore*.]

[1879 S., p. 96. Approved and in force March 31, 1879.]

Sec. 3168. Duty of commissioners. 2. Said commissioners shall meet upon the request of the common council; and it is made the duty of the city clerk to notify each of them of such request, and to designate therein the time and plate of meeting; which notice shall be served by the city marshal at least fifteen days prior to the time designated, either by reading or by leaving a copy at the usual

places of residence of said commissioners. They shall meet at the time and place designated, and examine the property sought to be appropriated, and shall also view and examine the real estate in the vicinity thereof to be benefited or injured by such proposed improvement. They shall, within ten days after they have concluded such examination, file in the office of the city clerk a written report, describing the property to be appropriated, and the name of the owner, if it be known (and, if unknown, a description of all real estate to be damaged thereby, if any there be). In cases when no part thereof is taken, and the name of the owner, if it be known (and, if unknown, stating the owner's name is unknown), a description of all real estate beneficially affected by said change or improvement, stating the owner's name if known (and, if unknown, showing it to be unknown). And upon the filing of such report with such clerk, said commissioners shall also file with such clerk a notice of the time and place when they will meet to estimate the injuries and benefits to the property sought to be appropriated, and to estimate the benefits and damages to all real estate injuriously or beneficially affected by such change or improvement; which meeting shall be held not less than fifty nor more than sixty days from the time of the filing such report and notice. And upon the filing of such report and notice, the clerk shall issue a written or printed notice to the persons whose lands are proposed to be appropriated and to those whose property it is proposed to benefit or damage or against whom or in favor of whom any assessment is to be made. If such person reside in the county where said city is situated, notice shall be served upon him, either by reading or leaving a copy thereof at his last and usual place of residence, at least ten days before the time designated for such meeting. In case the land-owner be unknown, or be not a resident of the county, or in case the residence of the land-owner be unknown, then notice shall be made by publication, once in each week, in a newspaper of general circulation published in said city, for three consecutive weeks. The last publication of notice must be at least fifteen days prior to the time designated for such meeting. It shall be the duty of the marshal to serve such notice, and make due return of service of such notice to the city clerk; and the city clerk shall obtain proof of publication as provided by law, and preserve such proof, as also the notice returned by the marshal. The notice to be issued by the clerk shall state, generally, the character of the proposed change, alteration, or improvement, but need not describe the proposed change or improvement particularly, and need not describe the property to be affected; but if it be sufficient to inform the person of the general nature or character of the change, or of the general direction and character of the proposed route or line of the proposed street, alley, highway, or water-course to be laid out, changed, or improved, and the time and place of such meeting, it shall be valid and effectual. If an interested person shall appear

before the commissioners, he shall not thereafter be permitted to aver either a defect or want of notice. It shall be the duty of the marshal to serve all notices and subpœnas issued by the city clerk or the commissioners.

1. In determining what property will be assessed with benefits or damages, no *notice* to the property owners of the meeting of the commissioners is necessary, 99 Ind. p. 420. An assessment *without notice* is not void; and no injunction can be maintained for the absence of it, 78 Ind. 233. (Under old statute it was necessary, 50 Ind. 151.) *Notice* may be served at residence, 2 Bull. 142. In case of death pending proceedings, revivor must be had in name of heirs and not of administrator, 29 O. S. 633. Appearance and trial waive technical objections which do not go to jurisdiction, 48 Mo. 243; 27 Gratt. 910; 4 Ired. L. 34. As to who are *owners*, see note to § 2236. Where notice is served on agent, proof of agency must be had to confer jurisdiction, 30 Kas. 581. Parties who have had due notice, are bound to take notice of adjournments, 6 Pick. 470; 12 Kas. 17. Publication for three weeks is satisfied by insertion once each week, 15 Barb. 255.

2. This is a proceeding against the *owner* and not against one holding a *lien;* and the latter is not entitled to *notice*. Land taken upon which there is a judgment lien is discharged from the lien; but such is not the case with reference to a mortgage lien, which still remains, 59 Ind. 446; 7 Phila. 650; 47 N. Y. 157; and the *mortgagee* should be made a party to the proceedings and have notice served upon him. But a *mortgagee* is such an *owner* as entitles him to be made a party, and he may recover of the city the damages awarded, notwithstanding the amount has already been paid to the mortgagor, 109 Ind. 411; 38 Ind. 463.

3. The description should be so definite that the property may be identified at all stages of the proceedings, the test being that it should be as definite as is required for a deed, 49 Mich. 465; 13 O. S. 373; 32 N. J. L. 49; 109 Ind. 488. Description by a line will invalidate proceedings, 49 Mich. 465; 40 Mich. 229. Purpose should be sufficiently stated to show a public use, and that the power is conferred by the statute, 34 O. S. 114; 54 Ala. 288; 5 Hun. 86; 53 Conn. 551. "Owners" means all persons having an interest in the land to be taken, 47 N. Y. 157; 37 Kas. 480; 14 Neb. 270; 10 Md. 76. Includes owner of ground rent, 30 Pa. St. 362; mortgagees, 1 O. C. C. 49; 20 Neb. 276; 38 Ia. 463; tenants for life, 13 Pa. St. 497; 3 W. & S. 460; vendors in executory contract, 6 Hun. 553; lessees from year to year, or for a term, 107 Pa. St. 166; 25 Pa. St. 229; 10 Md. 76; 11 R. I. 258. Heirs should be made parties by name, 34 Ind. 337. Trustee should be made party and not the beneficiary, 32 N. J. L. 49; 36 N. J. L. 181; 11 Cush. 506; 51 Cal. 138. Inchoate right of dower is extinguished by making the husband alone party, 8 N. Y. 110; 3 O. 24; see 27 N. J. Eq. 534. Where the application alleges that certain persons are owners, the corporation is estopped to dispute the title alleged, 65 Cal. 241; 37 Kas. 253; 35 Minn. 439.

4. A purchaser, to whom lots are conveyed by warranty deed while a proceeding to condemn a portion thereof for street purposes is pending, is entitled to recover from the grantor any damages that may be awarded in the latter's name, and paid to him by the city by reason of the condemnation, and the grantor will not be permitted to prove by parol that he reserved the damages at a date prior to the execution of the deed, 117 Ind. 362.

5. Turnpike can not be taken for a highway without special legislative power, 11 N. H. 19; 15 Vt. 745; and when it is so taken, the owner of the fee is not entitled to compensation, 12 Metc. 455; 104 Pa. St. 583; 50 N. Y. 302. Corporation must condemn all the portion of a turnpike within its limits, if any, 2 Bull. 126. Testimony of experts as to the rate at which the net income of a turnpike should be capitalized, is competent to show the value of the franchise, 5 Bull. 77; 18 Bull. 308.

First Report of Commissioners.

To the Common Council of the City of ———:

The undersigned city commissioners [and city commissioners *pro tempore*] of said city of ———, to whom was referred the matter of opening a street from ——— to ———, within said city, hereby report that they have examined the same, and find that it will be necessary to appropriate the following property, all situated within said city of ———, county of ———, and State of Indiana, owned by the persons named, viz.:

No of Lot.	Addition.	Name of Owner.

Also a strip of land described as follows, viz.: Beginning at the northwest corner of lot 13 of Johnson's addition to said city, running thence north 300 feet, thence east 60 feet, thence south 300 feet, and thence west 60 feet, to the place of beginning, owned by ———.

We also report that the following lots and tracts of land, within said city, will be damaged by the opening of said street, viz.:

No of Lot.	Addition.	Name of Owner.

We further find that the following lots and tracts of land, within said city, will be benefited by the opening of said street, viz.:

No of Lot.	Addition.	Name of Owner.

[Signed] _____

City Commissioners.

Commissioners' Notice of Meeting.

To Whom it May Concern:

Notice is hereby given that the city commissioners of the city of ———, State of Indiana, will meet at the council chamber of said city at 10 a. m. on the ——— day of ———, 18—, to estimate the injuries and benefits to the property sought to be appropriated, and to estimate the benefits and damages to all real estate injuriously or beneficially affected by said change, by the opening of a street from ——— to ———, within said city, which property and real estate is described in their report this day filed with the clerk of said city.

[*Signed by all the commissioners and filed with city clerk.*]

Clerk's Notice.

Office of City Clerk, ———, ———, 18—.

To the Marshal of the City of ———, Greeting:

You are hereby instructed to notify ——— ——— ———

in accordance with the provisions of act of the general assembly of the State of Indiana, entitled "An act in relation to the laying out, opening, widening, altering and vacation of streets, alleys and highways, and for straightening or altering of water-courses by the cities of this State, and providing for the appointment of commissioners to assess benefits and damages, providing their duties, and the method of procedure, and providing for the collection of benefits and payment of damages, and prescribing the duties of city officers in relation thereto, and providing remedies in such matters," approved and signed March 17, 1875, will meet in the office of the city clerk, room number four, city hall, in the said city of ———, on ———, the ——— day of ———, A. D. 18—, at ——— o'clock — m., for the purpose of appraising and assessing the damages and benefits (if there be any) accruing to the owner or owners of the land or lots through which it is proposed to open a street from ——— to ——— within the city of ———.

By order of the common council.

Witness my hand and the seal of the city of ———, this ——— day of ———, 18—.

———

City Clerk.

Marshal's Return.

Served by reading to C. D., etc.; and by leaving a certified copy thereof at the last and usual place of residence of E. F. I. K. not found.

———, 18——.

U. Z.,
City Marshal.

Protest of Land-owner.

To the City Commissioners of the City of ———:

The undersigned, a land-owner who will be affected by the opening of a street from ——— to ———, within said city, respectfully protests against A. B., C. D., and E. F. serving as commissioners in the proceedings for the purpose of opening said street for the reason that they are owners of land that will be liable or ought to be assessed with benefits and damages.

U. Z.

[1875 S., p. 17. Approved and in force March 17, 1875.]

Sec. 3169. Hearing and proceedings. 3. Said commissioners, or a majority of them, shall meet at the time and place designated, and shall proceed to hear and determine all matters concerning the laying out of the street, alley, highway, or water-course so mentioned in the notice issued to them. They shall have power to administer oaths, to hear evidence, to examine witnesses, and to adjourn from time to time. They shall also have power to issue subpœnas for witnesses, and require the marshal to serve the same; and shall have power to require the city engineer to render them such assistance as they may require. A majority of such commissioners may act, determine, and make valid and effectual reports; and they shall have power to attach and punish, by fine, witnesses who fail to appear when properly subpœnaed.

Subpoena.

The State of Indiana, to the Marshal of the City of ———, *Greeting:*

You are hereby commanded to summon A. B. to appear before the city commissioners of the city of ———, State of Indiana, at the council chamber

thereof, on the ——— day of ———, 18—, at 10 a. m., there to testify in the matter of opening a street within said city, which matter is now pending before them. And of this writ make due return.

Given under our hands and seals this ——— day of ———, 18—.

[*Should be signed by at least three commissioners.*]

Claim for Damages.

———————————, 18___.

To the City Commissioners of the City of ———:

As the owner of lot No. ———, of ——— subdivision, fronting ——— feet on the ——— side of the proposed street, I claim that I will be damaged in the sum of ——— dollars, by the proposed improvement of said proposed street under the resolution therefor, passed by common council of said city on the day of ———, 18—.

———————————

Sec. 3170. Assessment of damages and benefits. 4. It shall be their duty to examine the property sought to be appropriated, and to estimate its value; and they shall also view the real estate in the vicinity thereof, and estimate both the injuries and benefits thereto. In assessing and awarding damages and benefits, they shall not be confined to real estate upon or along the line of the proposed change or improvement, but shall estimate benefits and damages to all real estate injuriously or beneficially affected. They shall also consider and determine what part, if any, of the expense of such change or improvement ought to be paid out of the general fund of the city. They shall assess upon each lot of land belonging to the same person the damages alone [done] thereto, and shall also assess all benefits which may accrue to real estate in the vicinity and which may be beneficially affected; and shall also assess the value of real estate actually appropriated, and the benefits resulting to the part, if any there be, of any lot or parcel of land not taken, as well as to the other real estate benefited but of which no part is taken.

1. Where an established *grade* is *changed*, the city commissioners must assess the damages thereby occasioned. 50 Ind. 151; 120 Ind. 254; 113 Ind. 425.

2. So where the *channel of a stream* of water flowing through the city is changed, they must estimate the value of the land or other property to be appropriated; state what part of the expense the city must bear, the real estate benefited and the amount, and in all other matters the same as in opening a street. 38 Ind. 223. Until *assessment* of damages, and payment or tender an *injunction* can be maintained, 100 Ind. 206.

3. *Damages* can not be assessed for the manner in which the street may afterwards be *graded* or improved; and for such damages the city is not liable for a failure to refer the matter to the commissioners; but it is liable for damages caused by laying out the street, if it does not refer the matter to the commissioners for assessment. 120 Ind. 254; 56 Ind. 127; 36 Ind. 90. A city may take possession of an *abandoned well* originally dug in a street by a lot-owner without making compensation for additional servitude, 26 N. E. Rep. 184.

ADDITIONAL NOTE.

4. *Measure of compensation.* The owner is entitled to receive (1) the value of the land actually taken; (2) the amount of damage or loss in value to the residue, if any, which may be occasioned either (*a*) by the severance therefrom of the part taken, or (*b*) by the *use* for which the appropriation is made, 5 O. S. 568.

5. *The value of the land taken* is its fair market value at the time it is taken, irrespective of the causes which have contributed thereto, and for all purposes for which it may be useful, 4 O. S. 208; 5 O. S. 568; 17 Wend. 650; 19 Wend. 678; 98 U. S. 473. From this amount no deduction can be made for benefits of any kind, Const. 1851, Art. 1, § 19.

6. *The amount of damage or loss in value to the residue* involves the question, whether the residue is as valuable after the part taken is severed from it for the use for which it is taken as it was before. 30 O. S. 108. Here arises the matter of benefits. They are distinguished as general and special, 6. O. S. 182. General benefits which arise, and are shared in equally by all the property affected by an appropriation, can not be taken into account, but those special, incidental benefits which accrue to the owner whose property is taken, and which are not shared in by the property generally affected by the appropriation, may properly be considered in estimating the loss in value to the residue, 5 O. S. 568; 6 O. S. 182; 30 O. S. 108; 21 Kas. 247; 3 Neb. 237; 11 Neb. 585. Effect upon the residue depends largely upon what is to be considered an entire tract before any part is taken. Mode of user and improvement is usually controlling. For what constitutes a city or village lot, see 3 Bull. 965; 50 Mich. 506; 21 Minn. 122; 35 Minn. 439; 27 Kas. 382; 63 Ia. 397; 34 Ia. 353; 27 Wis. 108; 6 Hun. 149. For what constitutes one tract of farm land, see 19 Minn. 500; 15 Minn. 230; 70 Mo. 629; 25 Kas. 421; 61 Ia. 716. For benefits held to be special, see 98 Mass. 312; 125 Mass. 557; 17 Mass. 363; 27 Kas. 391; 99 Pa. St. 152. For particular benefits held not to be special, see 13 Minn. 508; 59 Wis. 364; 133 Mass. 253.

7. *Measure in particular cases.* A life tenant is, in the absence of statute, entitled to the use of the entire compensation, instead of estimated value of his life interest, 86 Mo. 473, 1 Pa. St. 132. As between the lessor and lessee, the lessee is entitled to such compensation as will make him whole in respect to his interest, 66 Pa. St. 425. Covenants which add value (*renewal*), 19 Wend. 678; 26 Pa. St. 238; as well as conditions which diminish value may be shown, 137 Mass. 319; L. R. 5 Eq. Cas. 227. If both parties are before the court, the covenant to pay rent may be extinguished and proper compensation awarded each, 11 O. 408; and when covenant is extinguished, the tenant should receive value of the term, subject to rent, 66 Pa. St. 425. If machinery or other fixtures have to be removed, tenant is entitled to the difference in their value on the property appropriated, and at some other place, applied to the same or some other use, and the expense of removal, 105 Pa. St. 547; 113 Pa. St. 214; (*bar fixtures*) 20 Bull. 8. For cases where small portion of building is taken, see 20 Pick. 159; 23 Pick. 425.

8. Where property can only be used for specific purposes, this fact may be considered in determining amount of compensation (*for dwelling house only*), 137 Mass. 319; (*park*) 45 N. Y. 729; (*meeting house*) 7 Gray, 106; (*cemetery*) 11 Wend. 149; (*grave-yard*) 6 Q. B. 37. If property is taken for a street which is subject to a public easement by dedication or prescription, owner is entitled to nominal damages only, 73 N. Y. 179; 15 Phila. 381; 22 Pick. 75; 73 Me. 357. But if subject to a private easement only, compensation subject to easement should be awarded, 47 N. H. 228; 4 Gray, 537; 2 Gray, 271. Where property already subject to one public use by appropriation is taken for another, owner is entitled to compensation for additional burden and inconvenience occasioned by change of use, 18 O. S. 92. If perpetual easement is taken, which is in its nature exclusive, it amounts practically to a fee, and owner is entitled to full value of land, 22 Minn. 286; 63 Ia. 397; but where easement for slope of fill is compensated for, it should not be as for a fee, 34 O. S. 276.

9. No damages can be allowed for attorney's fees, or costs in the proceedings, 6 Phila. 81; 9 Wend. 244.

10. *Evidence.* A witness properly qualified may testify (1) what his opinion is as to the value of the property actually taken, and (2) what his opinion is as to the value of the residue, before and after the part taken is severed from it for the uses of the appropriation, excluding from the first all benefits from the appropriation, and from the second all general benefits. But he may not state what his opinion is as to the amount of damage to the residue, 4 O. S. 583; 5 O. S. 575; 45 O. S. 309; 21 Kas. 575. But see 1 O. C. C. 130. It is not compe-

tent for the owner to show what he has been offered for his property, 64 Miss. 399; 57 Wis. 332; 8 Kas. 419; 35 Cal. 247; nor what has been offered for similar property, 11 Cush. 506; 19 Minn. 464; nor what the owners of similar property have offered to take for it, 111 Mass. 543; 36 N. J. L. 557. But it is competent to show what he has said as to the value of his property, as an admission, 37 Kas. 162; and what he has offered to sell it for, 78 Pa. St. 454. And it is competent to show what the owner paid for his property, and he may, thereupon, show the circumstances of his purchase, 100 Mass. 350; 42 Ark. 265. Rental of premises may be shown as tending to indicate value, 20 Bull. 8. "View" of premises should be considered as part of the evidence, 19 Bull. 258; 123 Ill. 188. Value for taxation is not competent, 5 Gray, 35; 44 Ark. 258.

11. The measure of damages for appropriating way across railroad is compensation for land taken, subject to the right to use the same for railroad purposes, and such further sum as will compensate for making and maintaining the crossing with suitable cattle-guards, fencing, signs, planking, etc., 61 Mich. 507; 14 Gray, 155; 58 Mich. 641; 1 Allen, 324. But the railroad is not entitled to recover for possible expense by way of accidents, 79 Me. 386; 14 Gray, 155; nor for expense of ringing bell at crossing, 78 Me. 61. If railroad occupies street on condition that the municipality shall not be required to appropriate in order to cross it with other streets, it will be estopped to claim compensation, 3 O. C. C. 455.

Sec. 3171. Report. 5. The said commissioners shall, within ten days after they have concluded their investigation, file in the office of the city clerk a written report, wherein they shall report upon the following matters, to wit:

First. The value of the property to be appropriated, describing it, and the name of the owner, if it be known (and, if unknown, stating that the owner's name is unknown).

Second. The damages to property, if any there be, in cases where no part thereof is taken.

Third. The benefits to real estate beneficially affected by said change or improvement, describing the real estate, stating the owner's name, if known (and, if unknown, showing it to be unknown).

Fourth. The general character and direction of the proposed improvment or change, as to length, direction, and width.

Fifth. The amount, if any, to be paid by the city.

The report must be *certain* and *definite* in respect to names of owners and value and description of property taken as well as of that upon which damages or benefits are assessed. But describing a parcel of land as the "remainder" of a lot from which a specific part has been taken is a good description, 82 Ind. 178.

Second Report of City Commissioners.

To the Common Council of the City of ———:

The undersigned, city commissioners of the city of ———, State of Indiana, respectfully report in the matter of opening a street from ——— to ———, within said city, that on the ——— day of ———, 18—, at 10 a. m., they met, pursuant to your request and the notice of the clerk of said city, and entered upon the consideration of the matter of opening said proposed street; that they examined the property proposed to be taken for such street, also the contiguous property and property in the neighborhood, with a view of ascertaining what property would be benefited and what property damaged, and the owners' names of the same; and on the ——— day of ———, 18—, filed with said clerk a report giving a description of the property, with the names of the owners

of such property, which report was accompanied by a notice, filed with said clerk, that they would meet at the council chamber of said city at 10 a. m., on the ——— day of ———, 18—, for the further consideration of said proposed street. At the time designated they met in said council chamber, and having found that the city clerk had issued to the city marshal a notice of the time, place and object of said meeting, which had been served by said marshal upon all the persons affected by said proposed street, and who were named in said first report, at least ten days before the time of said meeting, they proceeded to investigate the matter of opening said proposed street, and in pursuance of said investigation report as follows:

PROPERTY TO BE APPROPRIATED.

That it will be necessary to appropriate the following property, of the value named:

Description of Property to be appropriated.	Value.	Name of Owner.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total Value, ...	.....	.....

PROPERTY THAT WILL BE DAMAGED.

That the following property will be damaged in the amount named:

Property not taken but damaged.	Amount of Damages.	Name of Owner.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total Damages, ...	.....	.....

PROPERTY THAT WILL BE BENEFITED.

That the following property will be benefited in the amounts named:

Real Estate Beneficially Affected by the Opening of said Street.	Amount of Benefits.	Name of Owner.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total Benefits, ...	.....	.....

The general character and direction of said proposed street, as to its length and width, is as follows, to wit: Beginning at the northeast corner of lot 13, of Wilson's addition to said city, county of ———, and State of Indiana, thence north six hundred feet, thence east sixty feet, thence south six hundred feet, and thence west sixty feet, to the place of beginning, valued at $———.

That the sum of $——— should be paid by said city, [*or*, that no amount should be paid by said city, except the expenses and pay of the city commissioners and their clerk, a schedule of which is hereto attached.]

[*Signed by at least three commissioners.*]

SCHEDULE OF COSTS.

A. B.,	3	days'	services	as	commissioner	($2.00), ...	$ 6 00
C. D.,	2	"	"	"	"	("), ...	4 00
F. F.,	4	"	"	"	"	("), ...	8 00
H. I.,	4	"	"	"	"	("), ...	8 00
J. K.,	4	"	"	"	"	("), ...	8 00
L. M.,	10	"	"	"	clerk	("), ...	20 00
		Total,				. . . . .	$54 00

Sec. 3172. Report. 6. The character of the change or improvement shall be stated with reasonable certainty; and the real estate for which damages are awarded, and that upon which benefits are assessed, shall be described with like certainty in the report of the commissioners. In cases where both benefits and damages shall be assessed upon the same real estate, or to the same person or persons, the benefits, if less than the damages, shall be deducted from the assessment of damages. In assessing benefits, the said commissioners shall consider, not only the real estate through which the proposed improvement is to pass, but shall consider all such as is benefited and which is in the vicinage.

See § 3171, *note*.

Sec. 3173. Report as to infants and insane. 7. In case any landowner interested in or affected by such proceedings shall be of unsound mind, or shall be an infant, the commissioners shall certify the same to the proper court; and said court shall, thereupon, appoint a guardian for such infant or person of unsound mind; and thereupon the commissioners shall cause five days' notice to be given each guardian, who shall, thereupon, appear and protect the interests of his ward. In case such infant or person of unsound mind have a guardian duly appointed and qualified, then notice may be served upon such guardian, as provided in the second section hereof [§ 3168]; and such notice shall be valid and effectual. If there be a defect of notice or failure of notice as to one or more interested persons, such failure or defect shall not affect such proceedings, except in so far as they may touch the interests or property of such person or persons themselves, and shall not avail any other person concerned in such proceedings. Upon the application of persons whose lands or property shall have been assessed, but who have not had notice (which they must affirmatively show), the city clerk shall notify said commissioners, who

shall meet upon their own motion, hear and determine the claims of such persons (to whom five days' notice shall be given), and report to the council. In case they are entitled to damages which have not been assessed, the same shall be paid out of the city treasury; and in case the land shall have been assessed with benefits, and the commissioners deem the assessment just, the original assessment shall be deemed valid and effectual, and shall be enforced as originally made.

Even if there be *no notice*, an *injunction* can not be maintained, because of the provisions of this section, 78 Ind. 233.

Commissioners' Notice to Court.

To the Honorable ——— Circuit Court:

The undersigned, city commissioners of the city of ———, hereby notify said court that in the matter of opening a street in said city they find that lot 13 of Ristine's addition to said city is owned by R. S., a minor [*or*, a person of unsound mind], which will be affected by the opening of said proposed street. They therefore pray that a guardian be appointed for him.

[Signed]

Commissioners' Notice to Guardian.

To U. T., Guardian of R. S.:

You are hereby notified that the undersigned, city commissioners of the city of ———, State of Indiana, will meet at the council chamber of said city at 10 a. m. on the ——— day of ———, 18—, for the purpose of estimating the injuries and benefits to the property of said R. S., sought to be appropriated, and the damage and benefits to his real estate injuriously or beneficially affected by the opening of a street from ——— to ———, within said city.

[Signed]

Marshal's Return.

Served the within notice on U. T. by reading the same to him [*or*, by leaving a certified copy thereof at his last and usual place of residence].

Dated ———, 18—.

L. X.,
City Marshal.

Clerk's Notice to Commissioners.

To the City Commissioners of the City of ———, Greeting:

You are hereby notified that in the matter of the opening of a street from ——— to ———, within said city, A. B., the owner of lot 13 of Williams' addition to said city, which was assessed with $——— benefits [*or*, damages], has shown to my satisfaction that he had no notice of your meeting for the purpose of assessing the benefits [*or*, damages] aforesaid to said lot, occasioned by the opening of said proposed street.

X. Y.,
City Clerk.

Application for Re-assessment.

To the Clerk of the City of ———:

A. B., being duly sworn, upon his oath says that he is the owner of lot 13 of Williams' addition to the city of ———, State of Indiana, which, in the matter of opening a street from ——— to ———, within said city, has been as-

sessed by the city commissioners thereof with $——— benefits; that said lot will not be benefited in that amount, but will be in fact damaged by said proposed opening in the sum of $———. And he states further that no notice of the time of the meeting of said city commissioners for the purpose of assessing benefits and damages caused by the opening of said proposed street, was served upon him, nor did he have any actual notice thereof of the meeting of said city commissioners to assess such benefits and damages, although he was at that time and still is a resident of said city [*or*, of the county of ———, State of Indiana], and such fact of his residence within said city [*or*, county] was never reported in the first report of said commissioners filed in the said matter; nor was he notified by the publication of any notice by you of said meeting of said commissioners.

Wherefore he asks that you notify said city commissioners of the fact that he had no notice of said meeting, and that he desires a re-assessment of said lot.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

X. Y.,
Notary Public.

[Notarial Seal]

Commissioners' Notice to Applicant for Re-assessment.

To A. B.:

You are hereby notified that the city commissioners of the city of ———, State of Indiana, will meet at the council chamber of said city at 10 a. m., on the ——— day of ———, 18—, to hear your application for a re-assessment of benefits [*or*, damages] to lot 13 of Williams' addition to said city, owned by you, in the matter of opening a street from ——— to ———, within said city.

[*Signed by the commissioners.*]

Sec. 3174. Action of council on report. 8. If the common council, within twenty-eight days after the filing of said report, shall, by a vote of two-thirds of the members thereof, determine to make the appropriation of the real estate for such improvement, they shall enact a resolution accepting said report, and requiring the city clerk to deliver a certified copy of so much thereof as assesses benefits and damages upon real estate, and in which the real estate so assessed is described, to the city treasurer. The common council may refer back the matters reported upon to said commissioners, with such suggestions as they may deem proper; and the commissioners shall meet and proceed, as provided in section twenty-three of this act [§ 3189].

1. Until the report is duly accepted and the appropriation made, the proceedings remain *in fieri;* and if not acted upon, the proceedings are at an end. It is not a judgment, but more like the verdict of *ad quod damnum* jury. It "has no binding force, and none of the attributes of a judgment, until it has been acted upon by the common council in strict conformity with the requirements of the statute." A resolution merely "*accepting*" the report is insufficient. 71 Ind. 7. A record of the action of the council must be made; it can not be shown by *parol*, even though no record of such action was ever made, 124 Ind. 86.

2. The council is not bound to act upon the first report unless it desires to make the appropriation within twenty-eight days; it is only upon the second report that it must act either for or against the proposed appropriation within that time, 71 Ind. 7.

3 As soon as the report is accepted and the land appropriated, the *city* becomes *liable for* the amount of *damages* assessed; and suit can be maintained to recover them. The council can not thereafter set aside the assessment, nor, by refusing to open the street, *avoid* their *payment*. The property owner is not required to wait until the city collects the benefits, but is entitled to it at once, 44 Ind. 97.

4. The resolution of the council appropriating the land necessary for a street must be definite. But describing the land as a strip thirty-one feet wide, from the south side of a given lot next to the street to be widened, where that is the case, is good; and it is not vitiated by adding "so as to make the said street fifty feet in width," 82 Ind. 178.

Report Referred Back.

Be it ordained by the common council of the city of ———, that the report of the city commissioners in the matter of the opening of a street from ——— to ———, within said city, filed with the city clerk on the ——— day of ———, 18—, be and the same is hereby referred back to said commissioners, with the following suggestions, viz.: [*State them.*] Said commissioners are requested to meet in the council chamber at 10 a. m. on the ——— day of ——— 18—, to reconsider said report.

Clerk's Notice.

To the City Commissioners of the City of ———:

You are hereby notified that your report in the matter of opening a street from ——— to ———, within said city, filed with me on the ——— day of ———, 18—, at a regular [*or*, called] meeting of the common council was referred back to you with the following recommendations, viz.: [*State them.*] You are, therefore, by such council requested to meet at the council chamber on the ——— day of ———, 18—, at 10 a. m., to consider said recommendations.

X. Y.,
City Clerk.

Report of Commissioners on Recommendations.

To the Common Council of the City of ———:

The undersigned, city commissioners of said city, hereby report that they have considered the recommendations made by your honorable body to them by resolution adopted on the ——— day of ———, 18—, in the matter of opening a street from ——— to ———, and have adopted them, and so amended their report heretofore filed so as to correspond therewith, which report, as amended, is herewith tendered [*or*, decline to adopt them, and herewith return their original report].

[*Signed by the commissioners.*]

Resolution of Acceptance and Appropriation.

Be it ordained by the common council of the city of ———, that the report of the city commissioners of said city, in the matter of opening a street from ——— to ———, filed with the city clerk on the ——— day of ———, 18—, be and the same is hereby accepted and adopted; and the land, as described in their first report, filed on the ——— day of ———, 18—, and as described in their said report of ———, 18—, as necessary to be appropriated, to wit: [*Describe it by metes and bounds*], be and the same is hereby appropriated for the purposes of said street, and is hereby dedicated to the use of the public as a public street and highway of this city, to be known as Vernon street; and the clerk is hereby ordered to deliver to the city treasurer a certified copy of so much of said report as assesses benefits and damages upon real

estate, and in which the real estate so assessed is described; and to file a complete copy of said report in the recorder's office of the county of ———, State of Indiana. It is further ordered that said Vernon street be not opened until the ——— day of ———, 18—.

ANOTHER FORM OF ACCEPTANCE AND APPROPRIATION.

Resolved, By the common council of the city of ———, that the report of the board of city commissioners in the matter of opening and extending ———, be and the same is hereby, in all things, accepted, adopted and approved; that the benefits assessed and the damages awarded by said commissioners be and the same are hereby approved; that the real estate described in said report as necessary for the said opening and extension of said ———, be and it is hereby appropriated; and that the city clerk be and he is hereby directed to certify to the treasurer of the city of ———, Indiana, so much of said report as assesses benefits and awards damages upon the real estate, giving description thereof.

Provided, however, that said treasurer shall not tender or pay any part of the damages occasioned by said opening and extension, as shown by said commissioners' report, until the benefits assessed shall have been paid to said treasurer, the collection of which benefits the said treasurer is hereby directed to make as soon as said certified copy of said commissioners' report comes to his hands.

The city clerk shall thereupon file for record in the office of the recorder of ——— county, Indiana, the plat showing such opening and a certified copy of this resolution, all at the expense of the petitioners for said opening.

Sec. 3175. Duty of clerk—Lien. 9. It shall be the duty of the city clerk to deliver a certified copy of said report, as provided in the preceding section, to the city treasurer, and to copy the entire report into the records of the common council, and to carefully file and preserve the original. The benefits assessed shall be a complete and valid lien upon the real estate described as assessed, from and after the time the aforesaid resolution is adopted accepting such report, and filing a copy thereof in the office of the recorder of the county; and such lien shall be valid and enforceable against subsequent purchasers, and shall have priority over all other liens except those for state taxes.

Sec. 3176. Payment of damages. 10. The common council may determine to pay out of the general funds of the city the total amount of damages assessed, or any part thereof; and in case this shall be ordered and done, all benefits collected shall be paid into the treasury of the city, and shall belong to such city. In case the common council deem it proper to delay until such benefits are collected, they shall order the proceedings delayed until such benefits are collected: *Provided*, They shall not cause a delay beyond one year except in cases where the delay is caused by appeal, injunction, or other legal proceedings.

1. Until *payment* or *tender* an *injunction* may be maintained, 100 Ind. 206; 19 Ind. 326. (See 78 Ind. 233.)

2. Corporation is estopped to deny the title alleged in the application, 65 Cal. 241; 37 Kas. 253; 87 Ill. 317; 17 Neb. 587, but see § 3182. If there is doubt about the title, it should be alleged that certain persons claim to be the owners, and if a mistake has been made, the proceedings should be amended or abandoned, 35 Minn. 439.

3. Voluntary acceptance of damages by the owner is a waiver of all errors, and estops the party from disputing legality of proceedings, 89 Ill. 509; 9 Wis. 450; 80 Ill. 208; 48 Mich. 544. Payment of damages by corporation, in the absence of statute, will waive appeal, but deposit for purpose of obtaining possession will not, 85 Mo. 307; 12 Ind. 374.

4. Where city has condemned land which is subject to a lease, and an entry is made authorizing it to take possession upon payment of the amount of compensation, the amount allowed for the leasehold must be paid, if possession under the proceedings is taken, although the lease has, in the meantime, expired. 41 O. S. 600.

Sec. 3177. Collection of assessments. 11. Within ten days after the receipt of the certified copy of the report, as provided in sections eight and nine of this act [§§ 3174 and 3175], the city treasurer shall, in cases where the owners of the lands assessed are residents of the city, make demands of them, personally, for the amount of the benefits assessed, or shall leave at their residences written notices specifying the date of the filing of the report and the amount of the benefits assessed, and demanding payment of the amounts assessed; but said notice need not describe the real estate assessed nor the character of the improvement or change, and shall be sufficient if it notify the person of the assessment, the date of filing, and the amount assessed. In case the person or persons owning the lands should be non-residents of the city or unknown, or their residences be unknown, then the treasurer shall publish, for three weeks consecutively, in a paper of general circulation, a notice, specifying therein the date of the filing of report, the description of the real estate assessed, the amount assessed, the names of the owners, if known (and, if unknown, stating them to be unknown). In case the persons notified personally, or by written notices left at their residences, shall fail to pay such assessments within three months thereafter, the treasurer shall proceed to collect such assessments as hereinafter provided; and if the persons notified by publication shall fail to pay such assessments within one month after the last publication, the city treasurer shall proceed to collect such assessments as herein provided. The said assessments shall be collected and enforced in the same manner as assessments for street improvements; and the provisions of the law in force at the time upon the subject of the collection of assessments for street improvements ordered by the common council shall govern the treasurer, and he shall proceed in accordance therewith; except in this, that no precept shall be required, and that he shall proceed upon the certified copy of the report of the commissioners; and with the further exception, that no other or further demand than that herein provided for shall be made. It is hereby made the duty of the treasurer to keep a proper record of all his proceedings.

Notice of Assessment.

To A. B.: *Office of City Treasurer.*

You are hereby notified that on the ——— day of ———, 18—, the city commissioners of the city of ———, State of Indiana, filed with the clerk

of said city a report of the assessment of benefits and damages, a certified copy of which is now in my possession, assessed by them in the opening of a street from ——— to ———, within said city, wherein it appears that property owned by you, to wit: [*Describe it*], was assessed with $——— benefits. You will, therefore, take notice that unless said sum of $——— is paid within three months from the receipt of this notice, that I shall proceed to collect said sum of $——— by levy upon and sale of said property as above described.

Dated ———, ———, 18—.

C. D.,
Treasurer of the City of ———.

Notice of Assessment by Publication.

Office of City Treasurer.

To A. B.:

[*Proceed as in the above notice until the words* "within three months," etc., *and insert in place thereof, as follows:*] "by the ——— day of ———, 18—," [*and conclude as above.*]

Treasurer's Record.

Certified copy of the report of the city commissioners in the matter of opening a street from ——— to ———, [*or*, Vernon street,] received on the ——— day of ———, 18—.

Notified the following persons of their assessments of benefits at the time and in the manner stated below, to wit:

Name of Person Notified.	Date of Notification.	Manner of Serving Notice.

Received the following amount of benefits from the person named upon the property described, at the date given, to wit:

Name of Person Paying.	Property Paid Upon.	Date of Payment.	Amount.

Levied upon the following property, and sold the same at the time specified, viz.:

Name of Owner.	Date of Levy.	Property Sold.	Date of Sale.	Name of Purchaser.	Price Paid.	Disposed of Surplus.

Paid or tendered the following amounts as damages to the persons named upon the property described, to wit:

Name.	Date of Payment or Tender.	Payment or Tender.	Amount Paid or Tendered.	Property.

Sec. 3178. Report of collections. 12. It shall be the duty of the city treasurer to report to the common council the amount received by him upon such assessments at their regular meeting next after such receipt. He shall pay the damages only upon warrants ordered by the common council and drawn by the city clerk.

Sec. 3179. Private corporations. 13. In case the common council propose to appropriate a highway, bridge, or other property owned by a private corporation, or to assess benefits or damages upon property so owned, the clerk shall give notice to such corporation; and the said notice shall be served upon any officer thereof residing in such city; and if there be no officer residing in the city, then upon any agent residing therein or doing business in such city for such corporation. When a highway or bridge within a city, owned by a private corporation, is abandoned, or suffered to be out of repair so as to incommode or endanger travelers, the commissioners aforesaid are required to consider these facts in estimating the injury, if any, accruing from its use or appropriation for public purposes by the city, and may also estimate whatever it may cost such city to make the bridge or highway safe and free from damage.

Sec. 3180. Appeal. 14. If any person having an interest in the lands affected by such proceedings shall deem himself aggrieved thereby, he may appeal to any court of general jurisdiction, in the county within thirty days after the confirmation of said report by the council. In such case, the person asking the appeal must designate the court to which he appeals, and file a bond within thirty days from the confirmation of said report, conditioned for the payment of all damages and costs which may accrue by reason of such appeal should he not prosecute such appeal to effect. Upon such appeal, the regularity of the proceedings of the commissioners, and the questions as to the amount of benefits or damages assessed may be tried; but such appeals shall not prevent such city from proceeding with the proposed appropriation, nor from making the proposed change or improvement. The city clerk shall, upon the filing of a bond with sufficient surety, conditioned as aforesaid, make a transcript of the proceedings of the council requesting the meeting of the commissioners, the notice to the person appealing, the proceedings and the report of the commissioners, and the action of the common council thereon, upon the second day of the term. After filing the said transcript (and of which filing the appellant shall notify the attorney of the city, in writing), the appellant shall, in writing, state specifically the grounds of his objection to the proceedings of the common council and commissioners; and [no] other questions shall be tried or heard, except such as are with certainty to a common intent presented by the aforesaid written statement filed by such appellant. If the transcript shall show that a majority of such commissioners were present at the meeting in which were

had the proceedings appealed from, then no question shall be considered or tried concerning the request of the common council to the commissioners, nor as to the character of the notice or manner of serving it upon said commissioners. The transcript of the proceedings of the common council and commissioners shall be considered as the complaint; and the written statement, to be filed by the appellant as aforesaid, shall be in the nature of an answer or demurrer. Issues of law and of fact may be formed, tried, and determined as in other actions at law. The question as to whether notice was given others, or as to whether proper assessments were made in favor of or against persons other than the appellant, shall not be tried; nor shall any question be tried which does not directly affect the property or right of the person or persons who take the appeal as aforesaid. No question shall be tried concerning the regularity of the appointment of the commissioners, their qualification or competency, unless the appellant, by answer duly verified, shall put such matters in issue; but of their appointment, competency, and qualification the records of the common council shall be *prima facie* evidence; and it shall only be necessary for the city clerk, in the transcript to be certified by him as aforesaid, to recite that the commissioners were duly appointed and qualified, without in any wise setting out their appointment, qualification, or competency in such transcript. If upon such appeal, the report of the commissioners as to the benefits or damages be greatly diminished or increased, the city may, upon payment of all costs, discontinue such proceedings.

1. Although not the appellant, the *city* stands on the docket *as plaintiff*, the transcript standing as a complaint.

2. The *answer* of the appellant can not be *stricken out* on motion, 71 Ind. p. 17. Where the answer had attached as an exhibit a former proceeding for the opening of the street, it was held that where such answer varied in its allegation from the transcript, the latter controlled, 71 Ind. 7.

3. While the question as to whether proper assessments have been made in favor of or against persons other than the appealing party can not be tried on appeal; yet the question as to whether or not too much has been assessed against him, or whether or not he should be assessed at all, may be tried; and in doing so he may show that one or more of the *commissioners* was *incompetent* to serve because of interest or relationship, 99 Ind. p. 419. See § 3167, *note* 2.

4. The *opinion* of a witness may be taken as to the *value* of the land appropriated, but the damages as to the residue can not be proved by his opinion. Such damage can only be shown by the facts, circumstances, and situation of the land, from which the jury may assess the damages. Nor can the value of the strip appropriated be shown by asking a witness its value, considered with reference to the manner the appropriation affected the remainder of the land, 49 Ind. 493.

5. On appeal the *only question* that can be tried is the regularity of proceedings and the amount of damages, 44 Ind. 97.

6. The appeal is to the circuit court, 73 Ind. 1.

7. A *demurrer* for want of facts is not permitted; but the objection to the proceedings must be specifically stated, if apparent on the face of the transcript, and if it consist of matters of fact not apparent on the record, it must be specifically pleaded as an *answer*, 82 Ind. p. 181.

8. *After verdict* the city may, on the payment of costs, *dismiss* the proceedings, even though it has taken possession of the land appropriated, 97 Ind. 451.

Appeal Bond.

We, A. B., C. D., and E. F., acknowledge ourselves jointly and severally bound to the city of ———, State of Indiana, in the penal sum of ——— dollars. Witness our hands and seals this ——— day of ———, 18—.

Whereas, said A. B., within thirty days last passed, was assessed by the city commissioners of said city in the matter of opening a street from ——— to ———, within said city, with ——— dollars benefits, upon lot 13 of Williams' addition to said city, and the said A. B. has appealed therefrom to the ——— circuit court: Now if the said A. B. shall prosecute his appeal to a final judgment, and pay all damages and costs which may be assessed against him on said appeal, then this bond shall be void; else in force.

A. B., [Seal.]
C. D., [Seal.]
E. F. [Seal.]

Approved ———, 18—.

X. Y.,
City Clerk.

Notice of Appeal.

To the Clerk of the City of ———:

You are hereby notified that the undersigned hereby appeals to the ——— circuit court from the assessment of benefits and damages in the opening of a street from ——— to ———, within said city, made by the city commissioners of said city, as evidenced by their report filed with you on the ——— day of ———, 18—, and accepted by the common council on the ——— day of ———, 18—. An appeal bond is hereby tendered, with C. D. and E. F. as sureties, conditioned for the payment of all damages and costs which may occur by reason of such appeal.

A. B.

Received and filed ———, 18—.

X. Y.,
City Clerk.

Transcript of Clerk.

Be it remembered that upon ——— day of ———, 18—, the following petition was presented to the common council of the city of ———, State of Indiana, viz.:

[*Set out petition for the street.*]

On the ——— day of ———, 18—, the following proceedings were had and held by said council as appears from the records thereof, viz.:

[*Set out resolution referring petition to committee.*]

On the ——— day of ———, 18—, said committee filed the following report, and the following proceedings were had, as appears of record, viz.:

[*Set out committee's report and resolution referring the matter to the city commissioners.*]

On the ——— day of ———, 18—, said city commissioners, who had theretofore been duly appointed and had qualified as such commissioners, filed the following report in the office of the city clerk of said city, to wit:

[*Set out first report.*]

At the same time said commissioners filed the following notice, viz.:

[*Set out notice of place and time for assessing damages, etc.*]

Thereupon the following notice was issued by the clerk of said city to the city marshal, viz.:

[*Set out notice to land-owners.*]

Which notice was returned by said marshal on the ——— day of ———, 18—, indorsed as follows, to wit:

[*Set out marshal's return.*]

Also the following notice was given by publication in the *Daily Argus*, viz.:

[*Set out notice published.*]

as appears by the following proof of publication, viz.:

[*Set out proof of publication.*]

Upon the ——— day of ———, 18—, said city commissioners filed in the clerk's office of said city the following report, to wit:

[*Set out second report.*]

Upon the ——— day of ———, 18—, the following proceedings were had and held in said council, as appears from the records thereof, to wit:

[*Set out resolution accepting the report and appropriating the land.*]

I, X. Y., clerk of the city of ———, State of Indiana, hereby certify that the above and foregoing is a full, true and complete transcript of all the proceedings had and held by the common council and city commissioners of said city, as appears from files and the records of said city; and is a full, true and complete copy of all papers filed in my office in the matter of the opening of the street therein referred to.

In testimony whereof, I have hereunto set my hand and the corporate seal of said city this ——— day of ———, 18—.

[Corporate Seal]

X. Y.,
Clerk of the City of ———.

Notice to City Attorney.

To X. Z., City Attorney of the City of ———:

You are hereby notified that I have appealed to the ——— circuit court, from the proceeding of the common council and of the city commissioners of said city, in the matter of opening a street from ——— to ——— [*or*, Vernon street].

Dated ———, 18—. A. B.

Answer.

The City of ———, vs. A ——— B ———. No. ———.

A. B., as his grounds of objections to the proceedings of the common council and city commissioners of the city of ———, as evidenced by the transcript filed in this appeal, makes the following statement:

1. That lot 13 of Johnson's addition to said city, owned by him, is assessed with $ ——— benefits, when in fact said lot is only benefited in the sum of $ ———.

2. That lot 13 of Johnson's addition to said city, owned by him, is assessed with $ ——— benefits, when in fact it will be damaged by the opening of said street in the sum of $ ———.

3. That C. D., E. F., and G. H., who were three of said commissioners that served in the assessment of benefits and damages in the proceedings for the opening of said proposed street, were disqualified to serve as such commissioners in said proceedings, for the reason that they each severally owned property, to wit: said C. D. owned lot 20, said E. F. lot 41, and G. H. lot 36, all of Johnson's addition to said city, all of which lots were subject to be assessed with benefits in said proceedings, and affected thereby.

U. Z.,
Attorney for A. B.

Verdict.

[*Title.*] We, the jury in this cause, assess to the said A. B., as the actual damages [*or*, benefits] which will be caused to his property, as described in the transcript of the city filed in this case, by reason of the opening of a street from ——— to ———, within said city, as provided in the resolution and ordinance set out in said transcript, at $ ———.

C. D.,
Foreman.

Judgment.

[*Title.*] Comes now the city of ———, by X. Z., its attorney, and comes A. B., by R. U., his attorney, and said A. B. moves for a judgment on the verdict heretofore rendered herein, assessing to him $——— damages which will be caused to his property, to wit: [*Describe it,*] by the opening of a street from ——— to ———, within said city, as provided in the resolution and ordinance set out in the transcript herein, which motion the court sustains. It is therefore considered and adjudged by the court that said A. B., in said improvement, recover of the city of ———, ——— dollars to him awarded in said verdict, and his costs taxed at ——— dollars and ——— cents.

Sec. 3181. No injunction. 15. If the commissioners make a report to the common council, as herein provided, no injunction shall lie to restrain proceedings, unless the common council shall proceed to appropriate property upon which damages have been assessed, without first causing the same to be paid or tendered; but all other questions shall be raised and tried by appeal in cases where damages have been assessed, paid, or tendered.

Until the contrary appears, it will be *presumed* that all damages were assessed and *tendered*, 78 Ind. 233.

Sec. 3182. Payment of damages. 16. It shall be the duty of the city treasurer to pay or tender, or cause to be paid or tendered, the damages assessed to the persons to whom assessed. Should such damages be claimed by different persons, and the treasurer be duly notified thereof, he shall, in writing, certify that fact to the attorney of the city, and it shall be the duty of the attorney to file a bill of interpleader in a court of general jurisdiction of the county, making parties thereto such claimants; and he shall also pay into the hands of the county clerk the damages aforesaid; and upon the determination of the question, the money shall be paid to the party entitled thereto; but the damages, so far as concerns such city, shall be deemed paid from the time of their payment into the hands of the county clerk. It shall be the duty of the attorney of the city to take a receipt from the county clerk for the money so paid, which shall be by him delivered to the city treasurer, who shall file and preserve the same. It shall be the duty of said county clerk to safely keep such moneys, and if he go out of office, to hand the same over to his successor.

Where a street was petitioned for by a land-owner, and an ordinance was passed declaring the street opened, when in fact it was not opened, nor had any arbitrator (under the old law) been appointed to assess damages; and eight years afterward, after such land-owner had sold the land through which the street was to run, the council adopted a second resolution, declaring that the street be opened, and were about to do it; in an action to restrain the city, it was held not to be a good defense that the plaintiff's grantor had *waived* all claims to *damages;* on the ground that a sale of the premises by their owner, before the opening of the street, was a withdrawal of the offer to waive damages, 27 Ind. 66.

Notice to City Attorney.

To X. Y., City Attorney for the City of ———:

I hereby certify that the damages assessed upon lot 13 of Johnson's addition to said city, by the city commissioners, in the matter of opening the proposed street from ——— to ———, within said city, in the name of A. B., is claimed by both A. B. and C. D., each claiming to be the owner of said lot and entitled thereto.

U. Z.,
Treasurer of the City of ———.

Sec. 3183. Tendering damages—Injunction. 17. When the owners of the property are residents of the city, the treasurer shall tender damages to them at their places of business, or at their residences or domiciles, as he may elect. When such persons are unknown or not residents of the city, or if the treasurer, upon diligent inquiry, can not ascertain the residence or place of business of a resident of the city, he shall publish in a daily newspaper, once in each week for two successive weeks, a notice, specifying the amount in the treasury to be paid as damages, and stating the real estate upon which assessed and the readiness on his part to pay the same. Such notice, so published as aforesaid, if it state with reasonable certainty the amount of damages and so describe the real estate upon which assessed, shall constitute a valid and effectual tender. In case an injunction is obtained because damages assessed have not been paid or tendered, the defendant may, at any time before the determination of the suit, pay or tender the damages assessed, with interest from the time the property is entered upon, seized, or appropriated, and all accrued costs, and thereupon the injunction shall be dissolved. It shall be the duty of the attorney of the city, when an injunction is obtained upon the grounds aforesaid, to notify the city treasurer to ascertain the amount of damages assessed, and interest thereon and costs accrued; and such amount shall be drawn from the treasury, and paid into the court from which such injunction issued. The said treasurer shall take from the clerk of the court in which such suit for injunction is pending, a receipt for the amount paid him; and from the time of such payment into court, as aforesaid, the city shall be absolved from liability, unless there are other valid grounds for an injunction.

Notice to Unknown Owners.

Notice is hereby given to whom it may concern, that upon the ——— day of ———, 18—, the city commissioners of the city of ———, State of Indiana, filed with the clerk of said city a report in the matter of opening a street from ——— to ———, within said city, which report was accepted by the common council of said city, and the land therein described as neccessary to be appropriated was so appropriated on the ——— day of ———, 18—, and a certified copy of so much thereof as contained an assessment of benefits and damages was placed in my hands by the city clerk; wherein it appears that there was assessed to lot

13 of West's addition to said city, damages in the amount of $———, the ownership of which lot is unknown. Notice is therefore given that the said city stands ready and willing to pay said sum of $——— to whomsoever is entitled to it.

C. D.,
Treasurer of the City of ———.

Notice to Non-Resident.

To A. B.:

You are hereby notified that [*proceed as above to the first dollar mark, and then add*] Notice is therefore given you [*close as above*].

[1885, p. 234. Adopted and in force April 13, 1885.]

Sec. 3184. Vacation of streets, etc. 18. The common council shall have power to vacate streets, alleys, water-courses, public highways, or squares, or any part or parts of either, whenever they may deem it expedient for the public interests. Whenever a petition shall be presented by three reputable freeholders, praying for any such vacation, the common council shall refer the petition and matters appertaining thereto to the city commissioners. The persons praying for such vacation shall serve notice, by personal service or by leaving copy at the residences of persons interested, or by publication if such person be a non-resident or his residence is unknown, once in each week for three weeks in a newspaper of general circulation, published in said city, and shall show, by affidavit, due service of such notice. The said petitioners shall accompany their petition with a map or plat of the street, alley, highway, or square, or the part or parts thereof which they propose to have vacated; and shall, on said map or plat, show the surrounding locality; and shall also state the reasons upon which they base their petition for vacation. All the expense of such proceedings shall be paid by said petitioners, unless the common council shall otherwise direct.

NECESSARY STEPS TO VACATE A STREET.

The following are the steps and order in which they should be taken:

1. *Title.* Before a city can vacate a street it must have acquired, either by condemnation or dedication, a right to use that portion to be vacated, for a public street or way, § 3184.

2. *Petition and map.* A petition, signed by three reputable freeholders of the city, must be presented to the council and by it referred to the city commissioners. They must also present a map of the street to be vacated and the surroundings, § 3184.

3. *Notices.* The petitioners must serve a ten days' notice, on every person whose lands will be affected by the vacation, of the time and place of the meeting of the commissioners, either by reading it to him or by copy left at his residence, and if a non-resident, or his residence be unknown, by publication in a newspaper for three consecutive weeks, § 3184.

4. *Commissioners' proceedings.* The commissioners meet at the time and place set, examine all the premises, hear evidence, note who are objecting, and if all persons interested are not notified, require the petitioners to notify them, § 3185.

5. *Report of commissioners.* Within ten days after they have determined the whole matter they file with the clerk for the council a report showing: (1) the length, width and location of the street to be vacated; (2) the value of the land to be vacated; (3) the benefits to the persons desiring the vacation; and (4) the names of those objecting and their interest therein, § 3186.

6. *Action on report.* The council may refer the report back to the commissioners, § 3187 and § 3189, for correction; but they must, unless referred back, accept or reject it within twenty-eight days; and if a second report is made, they must act upon that within the same period of time after it is paid, § 3187 and § 3189.

7. *Payment of benefits and costs.* Any one assessed with benefits must pay them, by order of the council, into the city treasury within twenty days, and until paid there can be no vacation, § 3187. The petitioners pay the cost of the proceedings, § 3184.

8. *Property owner objecting.* If a property owner affected by the proposed vacation objects, there can be none, § 3187.

9. *Plat or map.* The petitioners must at their own expense make a map or plat of that portion of the street vacated and file it in the recorder's office, § 3192.

NOTE AND FORM.

1. Where the public *easement* in a street has been *vacated*, the freehold or soil *reverts* to the original dedicator or owner of the land, 10 Pet. 26; 6 Pet. 498; 94 Ill. 26; 75 Ill. 391; *contra* under stat. 46 Ia. 546. But if the original proprietor has conveyed the adjoining lot by description bounding the lot by the street, the rule of construction of deeds making a "stream" or a "road" a boundary would apply, and the grantee would take to the middle of the street, subject to the easement, in which case, upon vacation of the easement, the land to the middle of the street would go to the adjoining owner, 40 O. S. 332. But if the conveyance bounds the lot by the *line* of the street, this rule would not apply, and the reversion would be to the original proprietor, *Id.*

Petition for Vacation.

To the Common Council of the City of ———:

The undersigned, freeholders of said city, pray that the alley of said city running north from St. Joseph's street to St. Mary's street, between Alabama and New Jersey streets, be vacated for the following reasons, viz.: [*State them.*] They herewith file a notice which they caused to be served upon all persons that will be affected by the vacation of said alley. They also herewith file a map or plat of so much of said alley as it is proposed to vacate, showing the surrounding locality thereof.

Notice.

To A. B., etc. [*Set out all the names of persons that will be affected by the proposed vacations*].

You are hereby notified that the undersigned will petition the common council of the city of ———, State of Indiana, on the ——— day of ———, 18—, for the vacation of the alley of said city running from St. Joseph's street to St. Mary's street, between Alabama and New Jersey streets.

[*Signed by petitioners.*]

State of Indiana, County of ———, ss.

C. D., upon his oath, says that he served the above notice upon A. B., etc., by reading the same to him, and upon L. K. by leaving a copy at his last and usual place of residence.

C. D.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Seal.] X. Y.,
Notary Public.

[The above notice can be published once a week for three weeks in a newspaper of general circulation in the city.]

Resolution of Reference.

Resolved, that the petition of C. D. and others, with the accompanying papers, for the vacation of an alley of this city, running from St. Joseph's street to St. Mary's street, between Alabama and New Jersey streets, be and the same are hereby referred to the city commissioners of this city.

Another Form of Resolution of Reference.

Resolved, by the common council of the city of ———, that the petition of ——— and others, praying for the vacation of ———, be referred to the board of city commissioners, together with the plat accompanying the same, with instructions to assess benefits and damages caused by such vacation, and to make due report to the common council. The said board of city commissioners to return all petitions, plats, and notices.

The city clerk is hereby required to issue and the city marshal to serve the proper notices upon the city commissioners, and the petitioners are hereby required to serve the proper notices upon the property owners, and to show, by affidavit, due service of such notices; provided, that before the city clerk issue the said notices to the city commissioners a bond shall be filed with said city clerk to the approval of the mayor, guaranteeing the payment of all costs and charges of said commissioners in this matter.

Bond.

State of Indiana, ——— *County*, *ss:*

We, the undersigned, hereby bind ourselves, our heirs, executors, and administrators firmly to pay to the city of ——— the sum of two hundred dollars ($200), without relief from valuation or appraisement laws.

In witness whereof, we have hereunto subscribed our names this ——— day of ———, 18—.

The condition of this bond is such that, Whereas, X, Y, Z, and others have petitioned for and the common council have referred such petition to the board of city commissioners, in which petition the said petitioners pray for the vacation of twenty (20) feet off of the west side of Dakota street, from Morris street to the southeast corner of lot forty-three (43) in the Peru and Indianapolis Railroad company's south addition to the city of ———, Indiana. Now, if the undersgned shall pay all of the costs and expenses occasioned by such proposed vacation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed by us this ——— day of ———, 18—.

_____[Seal.]

_____[Seal.]

Clerk's Notice to Commissioners.

[See form under § 3168.]

SEC. 3185. Proceedings of commissioners. 19. The city commissioners shall meet pursuant to [such] notice; and shall examine witnesses and hear evidence, and may administer oaths, and adjourn from time to time. They shall view the street, alley, highway, or square, or part thereof, proposed to be vacated, and shall determine what persons, if any, will be benefited thereby; and shall assess such benefits, if any. In case any property owner immediately upon the line of said street, alley, highway, or square, or part thereof, sought to be vacated, who is directly interested therein, shall object to such vacation, the city commissioners shall report such fact to the common council. If the commissioners should consider that the necessary or proper parties have not been brought before them, they may require the petitioners to notify each person or persons as they may deem entitled to notice.

Notice to Omitted Property Owners.

To L. X.:

You are hereby notified, by order of the city commissioners of the city of ———, State of Indiana, that there is now pending before them the matter of vacating the alley running from St. Joseph's to St. Mary's streets, between Alabama and New Jersey streets, within said city; and that they will meet on the ——— day of ———, 18—, at 10 a. m., in the council chamber of said city, to hear any objection that you may desire to make.

A. B.

State of Indiana, County of———:

A. B., upon his oath, says that he served the above notice on L. X. by reading the same to him on the ——— day of ———, 18—.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Seal.] X. Y.,
Notary Public.

[1875 S., p. 17. Approved and in force March 17, 1875.]

SEC. 3186. Report. 20. Within ten days after their determination, such commissioners shall file in the office of the city clerk, who shall transmit the same to the common council, a report in writing, stating therein—

First. The length, width, and location of the street, alley, highway, or square proposed to be vacated.

Second. The value of the land upon which such street, alley, highway, or square is situated.

Third. The benefits to the persons desiring the vacation.

Fourth. The names of property owners or persons who may object to the vacation of such street, alley, highway, square, or park, and the nature of their interest therein.

Commissioners' Report.

To the Common Council of the City of ———:

The undersigned, city commissioners of said city, hereby report in the proposed vacation of the alley of said ———, between Alabama and New Jer-

sey streets, running from St. Joseph's street to St. Mary's street, that the length thereof is four hundred feet, and the width thereof twenty feet; that the value of the land upon which so much of said alley, as it is proposed to vacate occupies, is $2,000.00; that the lot within said city, State of Indiana, and the owners thereof, with the amount of benefits to each lot that will be benefited by said vacation, is as follows, to wit:

Name of Owner.	Description.	Amount of Benefits.

The persons objecting to the proposed vacation of said alley, with a description of the property owned by each, is as follows:

Name of Owner.	Description of Lot.

That the interest of such property owners thus objecting is that of abutting lot-owners whose lots abut upon that part of the alley that it is proposed to vacate. No property owner or person objects to the vacation of said alley.

The commissioners ask for an allowance of the amounts appended hereto for services rendered in said matter.

[Signed] _____

[1885, p. 234. Adopted and in force April 13, 1885.]

SEC. 3187. Action on report. *21.* The common council shall either refer the request [report] back to the commissioners, or accept or reject the report, within twenty-eight days after it is made to them. If they accept such report, they shall require the person against whom benefits are assessed to pay the same into the city treasury within twenty days thereafter. The common council shall have no power to order such vacation when objected to by property owners adjacent thereto. No person shall have any power or right to make any private use of any street, alley, highway, or square, or part thereof, ordered to be vacated until the benefits assessed have been fully and entirely paid; and unless paid within the time limited, the proceeding shall be wholly void.

1. A person *outside* of the *city boundaries* whose land touches the city limits and abuts upon the *terminus* of the street, is a stranger to the city, and can not object to the vacation; nor can he object because an abutting property owner within the city objects, 93 Ind. 533.

2. If a *remonstrance* is filed against the proposed vacation, the council can proceed no farther unless it be withdrawn; and an injunction lies to prevent the proposed vacation, 44 Ind. 418.

Resolution Adopting the Report.

Resolved, that the report of the city commissioners of this city, upon the proposed vacation of the alley running from St. Joseph's street to St. Mary's

street, between Alabama and New Jersey streets, filed with the city clerk on the ——— day of ———, 18—, be and the same is hereby accepted and adopted; that the persons therein assessed with benefits be and are hereby required to pay the same into the city treasury within twenty days from this date.

Resolution Vacating Alley.

Whereas, it has been shown to this council, which is hereby found as a fact, that all of the benefits assessed in the report of the city commissioners of this city filed with the city clerk on the ——— day of ———, 18—, upon the proposed vacation of an alley running from St. Joseph's to St. Mary's street, between Alabama and New Jersey streets, has been fully paid by the persons assessed therewith into the city treasury within twenty days from the date of the acceptance of said report by this council; therefore

It is hereby ordered and resolved that so much of said alley as is above described, be and the same is hereby vacated and abandoned as a public alley. The petitioners for the vacation of the same, to wit: [*Set out their names,*] are hereby required to pay all the costs of this proceeding.

Another Form of Resolution.

Resolved, by the common council of the city of ———, that the report of the city commissioners in the matter of the petition of ——— and others, praying for the vacation of ———, be and the same is hereby, in all things, accepted, adopted and approved, and that in accordance with said report the said ——— as described in said report, be and the same is hereby vacated.

Resolved further, that the said petitioners be and they are hereby required to pay to the city treasurer for the city, within twenty (20) days from the adoption of this resolution, the sum of $———, being the amount of benefits assessed over the damages by reason of such vacation; and also the sum of $———, being the amount of expenses reported by the city commissioners as taxed in this matter; and that said petitioners be and they are hereby required to have made out, by the city civil engineer, filed by the city clerk, and recorded in the recorder's office of ——— county, Indiana, a plat of the said ——— hereby vacated, and to procure from the city clerk and have recorded in the recorder's office of ——— county, Indiana, a certified copy of this resolution, all at their own expense.

Provided, that until the said benefits and expenses are paid as aforesaid, and such plat and certified copies of said proceedings recorded as aforesaid, said ——— shall not be vacated or otherwise used then as now.

[1875 S., p. 17. Approved and in force March 17, 1875.]

Sec. 3188. Clerk's duty. 22. It shall be the duty of the city clerk to keep, in a separate book, a record of all proceedings of the common council and city commissioners concerning the opening, laying out, changing, and vacation of streets, alleys, and highways, and to carefully and accurately index the same: *Provided,* That the common council may furnish him with printed blanks.

Sec. 3189. Reference of report and proceedings. 23. The common council, upon examination of any report of such city commissioners, may refer the same back to the said commissioners for further action; and when so referred, the common council shall designate at what time such commissioners shall meet to re-examine the matters; and the commissioners shall meet upon that day;

and of the action of the common council, and of the time of meeting, the parties interested shall take notice without any notice whatever being served upon them. The common council shall have power to refer any report whatever, under any provision of this act, back to said commissioners; and when so referred, the commissioners shall, within ten days after the conclusion of their examination upon such reference, make a report as hereinbefore provided; and the common council shall, within twenty-eight days after the same is made, either approve or disapprove the same. The proceedings upon such second report shall be the same as that provided where the first made is accepted and approved. When a second report is made, it shall be deemed final; and the common council must accept or reject the same within twenty-eight days after it is made to them. When any report is referred back to the commissioners, the common council may make such suggestions as they may deem proper, and may also call the attention of the commissioners to errors and defects, if any there be, in such report; but such suggestions shall not be binding upon said commissioners. Upon such reference, the commissioners shall meet as hereinbefore provided, and all persons shall take notice thereof as hereinbefore provided; and said commissioners may amend or alter their said report as they may deem proper and just, and shall consider any and all suggestions made to them by the common council.

The council can *refer back* the first report, but must either accept or reject the *second within twenty-eight days* after it is made, and such action is final; but the statute contains no such provision in relation to its action on the *first* report, 71 Ind. 7.

Sec. 3190. Change of street on petition of abutters. 24. Whenever a street, alley, highway, or water-course shall have been opened or laid out, the abutters thereon may, by mutual agreement, change the same so as to give it a proper vacation [location], width, or direction; provided they shall first obtain the consent of the common council. Before any such change shall be made, the persons interested therein shall file with the city clerk a written agreement, and shall petition the common council to change or alter such street, and shall state in their petition the reasons for such change, and shall accompany the petition with a map or plat of the highway and the surrounding locality.

Agreement to Change Street.

The undersigned, each the owner of the lots within the city of ———, State of Indiana, set out opposite their names, and which abut upon the street proposed to be changed, hereby mutually agree that Vine street, running from Franklin street to John street, in said city, may be changed as follows, to wit: [*Specifically set out the proposed change.*]

Names of Owners.	Description of Lot.	
[*Signed by owners agreeing.*]		

To the Common Council of the City of ———:

The undersigned repectfully show to your honorable body that they are each the owners of the lots or tracts of land respectively set opposite their names, which lots are situate within said city, State of Indiana, viz.:

Name of Owner.	Description of Lots or Tracts of Land.	

That they have mutally agreed in writing, signed by each one of their number, which contract is hereto attached, marked "Exhibit A," and made a part hereof, that Vine street, between Franklin street and John street, within said city, may be changed as follows, to wit: [*Set out the proposed change as set out in the written agreement.*] Said lots and tracts of land, as above described, are all the lots and tracts that abut upon that portion of Vine street which it is proposed to change; and no other person or persons own land abutting upon said part of Vine street than your petitioners.

The reasons for such proposed change are as follows, viz.: [*Set out the reasons.*]

They herewith file a map of so much of Vine street and the surrounding locality as will be affected by said proposed change.

They pray that said street may be changed according to the terms of said agreement.

[*Signed by all the land-owners.*]

Journal Entry.

Whereas, A. B. and others have filed the following written agreement with the clerk of this city, to wit: [*Set out the agreement.*]

And, whereas, they have also petitioned this council in writing, as follows, to wit: [*Set out the petition.*]

And, whereas, this council finds that all the owners of lots abutting upon so much of Vine street as it is proposed to change have signed said agreement and said petition, and thereby are consenting to said change; therefore

Resolved, that so much of Vine street as lies between Franklin street and John street be changed as follows, in accordance with said agreement and petition, to wit: [*Set out the change.*] To take effect and be in force when said petitioners shall have procured from the city civil engineer of this city a map or plat of said proposed change; and shall have caused the same to be recorded in the recorder's office of the county of ———, State of Indiana.

Sec. 3191. Removal of obstructions, etc. 25. The common council shall have power to pass all ordinances necessary to more effectually carry into execution the powers herein granted, and which are not inconsistent with the laws of the State; and they may also cause to be opened streets, alleys, or highways, which have been laid out or opened, but which have not been vacated; and they shall have power to cause all obstructions to be removed from highways, streets, alleys, or water-courses, when necessary for the general welfare. The marshal of said city shall have full power to open any street, alley, or highway, when directed by the common council, and may remove any and all obstructions therein. When any person shall, after five days' notice, fail, neglect, or refuse to remove obstructions, the marshal shall cause the same to be done

at the expense of such persons, and shall cause the city attorney to enter an action therefor; and in such action, judgment shall be rendered against such person for the reasonable expense and cost of such removal.

Sec. 3192. Plats. 27. When any street or alley shall have been opened or laid out, or whenever such street or alley shall be vacated, a proper plat thereof shall be filed in the recorder's office of the county in which such city is situated. In case of the opening or laying out of any street or alley, the plat shall be made by the city engineer and filed by the city clerk; and in case of a vacation of any street or alley, the persons desiring such vacation shall, at their own expense, cause such plat to be made out, filed, and recorded; and no order of vacation shall be deemed of effect until such plat is filed in the office of the recorder, as aforesaid.

Sec. 3193. Pending proceedings. 28. No proceedings now pending, nor any action pending or right of action, shall be extinguished or rendered invalid by the provisions hereof; nor shall anything herein contained be construed as abridging the powers of the incorporated cities of the State as conferred by the act of incorporation, except as herein expressly provided.

Sec. 3194. Compensation and damages. 29. If any owner of real estate shall, after the service of notice and during the pendency of such proceedings, make any improvements of the real estate sought to be seized for the purpose of street, alley, highway, or water-course, he shall not be entitled to any compensation whatever therefor; and if any land-owner shall, after service of notice and during the pending of such proceeding upon him, do any act which shall render the opening or change of a street, alley, highway, or water-course more expensive, the expenses thus caused shall be deducted from any charges awarded him on his real estate: *Provided*, That nothing herein contained [shall be construed] as preventing any such owner from receiving just compensation for such improvements as may have been commenced or contracted for prior to the service of such notice. It shall be the duty of all persons laying out out or dedicating streets, alleys, or highways to make the same conform in all respects to those of the city; and when they do not so conform to streets, alleys, or highways already laid out, the existence thereof shall not be deemed to benefit the real estate of such person: *Provided*, That nothing herein contained shall be considered as requiring such owner to grade or otherwise improve such highway, except as provided in the general law for the incorporation of cities.

ARTICLE 6.—ANNEXATION OF TERRITORY.

SEC.
3195. Extension over platted lots.
3196. Extension over contiguous lands—Action of council.
3197. Proceedings by county board.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3195. Extension over platted lots. 84. Whenever there shall be or may have been lots laid off and platted adjoining such city, and a record of the same is made in the recorder's office of the proper county, the common council may, by a resolution of the board, extend the boundary of such city so as to include such lots; and the lots thus annexed shall thereafter form a part of such city and be within the jurisdiction of the same. The common council shall immediately thereafter file a copy of such resolution, defining the metes and boundaries of such addition, in the office of the recorder aforesaid; which shall be recorded.

1. Annexations were legalized by general city law of 1857, 24 Ind. 169; 20 Ind. 477. The *motive* of a city in annexing territory can not be inquired into, in an action to restrain the collection of taxes levied on the same by the city, 59 Ind. 225.

2. A city has no power to annex *non-contiguous* territory, and *taxes* assessed by the city and collected by it on such territory must be *returned* when application is made under § 3157, 86 Ind. 587. Any citizen of the territory sought to be thus annexed may maintain an action for an *injunction* to restrain the annexation, but where only a natural and non-navigable stream intervenes between the territory sought to be annexed and the corporate boundary of the city, that alone does not constitute a barrier to the extension of the city limits over such territory, 104 Ind. 343. Where *several pieces* of platted territory do *not all* adjoin a city, but adjoin one another, and *one* of them *adjoins* the *city*, they may all be annexed, 23 Ind. 525.

3. The city has no power to annex *unplatted* territory, even with the consent of the owner, 108 Ind. p. 18; and an attempt to do so may be *enjoined*, 104 Ind. 343; 100 Ind. 443; 112 Ind. 344; and the collection of *taxes* thereon may also be enjoined, 55 Ind. 576; 99 Ind. 117; 112 Ind. 344, without averring that the tax duplicate is in the hands of the city treasurer, 104 Ind. 343; 100 Ind. 443. See 72 Ind. 161.

4. The legality of an annexation can not be tested by a *quo warranto* against the city officers for exceeding their powers, 65 Ind. 492.

5. Before the city can extend its limits over territory such territory must have been *platted* and recorded; and if it was never legally platted, so that the plat is not entitled to record [as if it was not signed], the recording of it will not give the city authority to act. The word "*plat*" here used is not applicable to out lots of a congressional section of land. The plat being void in the case referred to, an injunction was sustained to prevent the adoption of a resolution annexing the territory, 47 Ind. 274; 5 Ind. 547, 550; 100 Ind. 443. *Subdivisions* marked on the plat with the view to impress upon them the character of urban as distinguished from rural use, are to be regarded as *lots* within the meaning of this statute, 23 Ind. 525; 24 Ind. p. 173; 59 Ind. 396.

6. A city can not *prevent* the *incorporation* of certain territory as a *town*, by extending its boundaries over such territory, where proceedings for its incorporation are instituted before the board of commissioners of the county before a resolution for its annexation has been adopted by the city, 47 Ind. 274.

7. The right to annex territory is not based upon the right of *eminent domain*, 55 Ind. 515; nor does it take from an owner any private property without due process of law, 55 Ind. 515. If the territory is such as the city has the

right to annex, the owner of it can not prevent the annexation, 59 Ind. 396; 99 Ind. 117.

8. The territory must be *platted by the owner*, and if platted by one not the owner it can not be annexed; nor can a husband plat his *wife's* land, and the fact that the land that he assumes to plat was omitted from a previous plat made and acknowledged by her, can make no difference, 112 Ind. 344.

Resolution Annexing Territory.

Resolved, that the following platted territory, contiguous to the present limits and territory of this city, known as Ristine's addition to this city, of which a plat is filed in the recorder's office of the county of ———, be and the same is hereby annexed to this city, and the jurisdiction of this city is hereby extended over the same, so as to incorporate the same within the limits of this city, to wit: [*Describe it by metes and bounds, beginning with the city's present boundary line.*]

The city clerk is hereby ordered to file a certified copy of this resolution in the recorder's office of the county of ———, and State of Indiana.

Sec. 3196. Extension over contiguous lands—Action of council. 85. The limits of any city may be extended over any lands or contiguous territory, by the consent of the owner thereof in writing, and a resolution of the common council, passed by a two-thirds vote, extending the limits of such city over such lands or territory; which written consent and resolution shall be entered at length in the records of such city; and the common council shall cause a certified copy of both to be recorded in the recorder's office of the proper county. If any city shall desire to annex contiguous territory not laid off in lots, and to the annexation of which the owner will not consent, the common council shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and, at the same time, present to such board an accurate description, by metes and bounds, accompanied with a plat of the lands or territory proposed or desired to be annexed to such city. The common council shall give thirty days' notice, by publication in some newspaper of the city, of the intended petition, describing in such notice the territory sought to be annexed.

1. This and the next section are constitutional, 20 Ind. 272; 55 Ind. 515; and apply to all cases not covered by § 3195, 5 Ind. 547; 20 Ind. 272. At *common law* authority existed to annex contiguous territory; but in this State it is wholly statutory, 55 Ind. 515.

2. The statute is *strictly construed*, 55 Ind. 515; 58 Ind. p. 484. The *reasons* for the annexation should be stated in the petition, and the *map* or plat should be *verified*, but not the application, 20 Ind. 272; 32 Ind. 322; (sufficiency of expression of desire to annex).

3. The territory sought to be annexed must be *contiguous* to the territory of the city, 86 Ind. 587; but if one tract is contiguous to the city, and all the other tracts are contiguous to each other, that is sufficient, 87 Ind. 45; 108 Ind. 14; 23 Ind. 525.

4. The board of county commissioners has the *exclusive power* to annex *unplatted* territory, 104 Ind. 343; 100 Ind. 443; 99 Ind. 117; 47 Ind. 274; 55 Ind. 576; 91 Ind. 541; 99 Ind. 117; but none to annex *territory wholly platted*. It may, however, annex territory, both platted and unplatted, embraced in a single petition, 72 Ind. 161; 47 Ind. 274. The order of annexation, however, is con-

clusive, so far as the character of the land to be annexed is concerned; and the order of annexation can not be attacked on the ground that it is platted, 72 Ind. 161; or the proceedings merely *irregular*, 99 Ind. 117; or an insufficient petition, 108 Ind. 14.

5. The territory to be annexed may be described in the *petition* by congressional sections and subdivisions, 55 Ind. 515. The *plat* need not be filed with the petition, but may be at any time before final action of the board, even over objection of a remonstrant, 55 Ind. 515. The petition need not be *filed* at any specific period before the *first day* of the session of the board at which it is intended to present the matter of annexation, but thirty days' *notice* of the intention to present the matter to the board must be given by the city, 55 Ind. 515. A *survey* made before the intention to annex is formed may be adopted, at least if the petition contains an accurate description corresponding with such survey, 55 Ind. 515. The *presentation* of the petition must be the *act of the council*, and not of the individual members of the council, 55 Ind. 515. The proceedings should in some way show that it was the council as a body acting,—the act of the city The usual practice is for the mayor and councilmen to *sign it* (55 Ind. 515); but this is not required by the statute, nor, evidently, does the supreme court consider it necessary, 108 Ind. 14; 39 Ind. 373; 87 Ind. 45. In a *collateral attack*, it will be presumed that the *plat* showed the lands of the person objecting, and that such *owner*, which is not necessary, would not *consent* to the annexation, 108 Ind. 14. Consent conferred after proceedings begun before the board, does not oust its jurisdiction, 108 p. 18.

6. A *petition* is not faulty because it excepts from its *prayer* platted territory within the lines of a larger territory described, 87 Ind. 45. The *sufficiency* of the *reasons* for the annexation stated in the petition is left to the board acting upon it. That the inhabitants of the territory sought to be annexed enjoy the advantages of city government and institutions, and ought, therefore, to share its burdens; that the highways should be properly graded and improved; that drainage may be provided, and the like, are sufficient, 87 Ind. 45.

7. If some *notice* was given, its sufficiency can not be attacked collaterally, 96 Ind. 143; 108 Ind. 14. The *publication* is sufficient if it was made for thirty days before the first day of the term at which the petition is filed, excluding the first day of publication and counting the last one, which falls on the first day of the term, 87 Ind. 45.

8. *Acquiescence* on the part of a land-owner for a term of years, voting at city elections, building of school-houses and the improvement of streets within the limits of the annexed territory by the city, persons acting as members of the council elected from such territory, and the entering into a large indebtedness by the city because of the increased amount of taxable property, will work an estoppel as to such land-owner to contest the validity of proceedings to annex that are of doubtful legality. In such a case the owner is guilty of *laches*, 99 Ind. 117. And this is true, even though such land-owner has received no direct benefit from the improvements made by the city, and did not know during the period of acquiescence that the proceedings were void, 100 Ind. 443. But where the proceedings are by the council alone under § 3195 for the annexation of unplatted territory, a land-owner is not estopped to contest their validity on the ground of a *want of jurisdiction*, even though he voted and offered himself as a candidate at a city election, and unsuccessfully petitioned for street improvements in the annexed territory, 100 Ind. 443; 112 Ind. 344. Nor does the fact that a husband platted a *wife's* land without her knowledge, and it was then annexed, bar her right to recover back city taxes paid, even though street improvements without her knowledge were made, and she executed conveyances of the lots as thus platted, believing at the time that they related to lots previously and legally platted by her, 112 Ind. 344.

Resolution on Presenting Petition.

Resolved, by the common council of the city of ———, and State of Indiana, that the following petition be and is hereby adopted, and that it be

presented by this council to the board of commissioners of the county of ———, State of Indiana, to wit:

To the Board of Commissioners of the County of ———:

Your petitioners, the common council of the city of ———, State of Indiana, represent to your honorable body that the following territory, which they desire annexed to said city, is unplatted, and contiguous to said city, viz.: Beginning at the northwest corner of section thirteen, township eighteen north, of range four west, within said county and State, which is the southwest corner of the present territory of said city, running thence south one hundred and sixty rods, thence east three hundred and twenty rods, and thence north one hundred and sixty rods to the northeast corner of said section, which is the southeast corner of said city.

A plat of said territory, of which the above is an accurate description, is herewith presented to your honorable body.

Your petitioners assign as reason why said territory should be annexed to said city, that the same is thickly settled and requires better police surveillance than can be secured without municipal control; that the highways run from the country south of it through said territory to said city, upon which there is much travel, requiring them, by reason of such amount of travel, to be kept in better repair than they are kept in; that several streets of said city running south have no outlet, and none can be procured, though they are much needed by the public; and that the inhabitants of said territory enjoy many or all the privileges of living within said city without paying any taxes therefor, although their lands are greatly increased in value by their proximity to the said city.

Your petitioners hereby authorize the city attorney to present this petition to your honorable body, and pray that you will annex said territory to said city and extend the jurisdiction of said municipal corporation over said territory.

[*Signed by a majority of the councilmen.*]

It is also ordered that the city clerk give notice of the intention of this council to present said petition to said county board, by publication in the *Daily Argus* of this city for thirty days; to prepare a certified copy of said petition, accompanied by a copy of said notice and proof of publication, and place it in the hands of the city attorney, who is hereby directed to present the same, with the copy of said notice and proof of publication, to said board of commissioners at their regular meeting in the month of ———, 18—, and produce such proof before such board as may be necessary to secure the annexation to said city of the territory described in said petition. The city civil engineer is hereby directed to prepare an accurate plat of the lands and territory desired to be annexed to this city, to accompany said petition, and file the same with the city clerk by the next meeting of this council.

Clerk's Certificate to Petition.

I, X. Z., clerk of the city of ———, of the State of Indiana, hereby certify that at a regular meeting of the common council of said city, held in the council chamber of said city on the ——— day of ———, 18—, the above and foregoing petition was duly adopted by said council, and ordered, with the accompanying map, hereto attached and marked "Exhibit A," of the territory proposed to be annexed, to be presented to the board of commissioners of the county of ———, of the State of Indiana, by the attorney of said city; that the above is a full, true and complete copy of said petition, and the map therein referred to which was approved by said council on the ——— day of ———, 18—, as adopted by said council, as appears from the records and files of said city.

In testimony whereof, I have hereunto set my hand and the corporate seal of said city, this ——— day of ———, 18—.

X. Z.,

[Seal.] Clerk of the City of ———.

Approval of Plat.

Resolved, that the plat, filed with the city clerk by the city civil engineer on the day ——— of ———, 18—, of the territory proposed in the resolution of this council, adopted on the ——— day of ———, 18—, pursuant to the order of this council, be and the same is hereby approved and adopted; and said clerk is hereby instructed to place the same in the hands of the city attorney.

Notice.

To Whom it May Concern:

Notice is hereby given that at the regular meeting of the board of commissioners of the county of ———, State of Indiana, the city of ———, of said State, will present a petition, by its duly authorized attorney, pursuant to a resolution adopted on the ——— day of ———, 18—, by its common council, authorizing the presentation of the same, for the annexation to, and the incorporation within the limits of said city, the following territory situate within the county of ———, and State of Indiana, viz.: [*Set out the exact description contained in the petition.*]

By order of the common council of the city of ———.

Attest:
C. D.,
Clerk of the City of ———.
[Corporate Seal.]

A. B.,
Mayor of the City of ———.

Proof of Publication.

State of Indiana, County of ———, *ss:*

L. M., being duly sworn, upon his oath says that he is the publisher of the *Daily Argus*, a daily paper printed and published within the city of ———, and State of Indiana, that the annexed notice was published for thirty consecutive days, excepting Sundays, in said paper, the first publication being ———, 18—, and the last, ———, 18—.

L. M.

Subscribed and sworn to before me, this ——— day of ———, 18—.
[Seal.]

X.Y.,
Notary Public.

Consent of Land-owner to Annexation.

To the Common Council of the City of———:

I hereby consent that the following territory, or land, owned in fee simple by me, which is contiguous to said city, may be incorporated within the limits of and annexed to said city, and the jurisdiction of said city extend over said territory, viz.:

[*Describe it by metes and bounds.*]

A. B.

Resolution on Consent.

Whereas, A. B. has filed the following consent that certain territory of the county of ———, State of Indiana, owned by him, may be annexed to this city, to wit: [*Set it out*]; and

Whereas, this council finds as a fact that said A. B. is the owner in fee simple of said territory, and that the same is contiguous to the limits and territory of this city; therefore, be it

Resolved, by this common council, that said territory, to wit: [*Describe it*], be and the same is hereby annexed to this city of ———; the jurisdiction of said city is hereby extended over said territory; the same is hereby made a part of the

territory of and incorporated within the limits of said city; and the limits of said city are so extended as to correspond with the boundaries of said territory as above described, to wit: Beginning at, *etc.* [*Describe the boundaries of the tract annexed by commencing at a point in the corporate line of the city, and returning to a similar point.*] The clerk is hereby directed to enter at length in the records of this city, said written consent of said A. B. and this resolution, and cause a certified copy of both to be recorded in the recorder's office of the county of ———, and State of Indiana.

SEC. 3197. Proceedings by county board. 86. The board of county commissioners, upon the reception of such petition, shall consider the same, and shall hear the testimony offered for or against such annexation; and if, after inspection of the map and of the proceedings had in the case, such board is of the opinion that the prayer of the petition should be granted, it shall cause an entry to be made in the order-book; specifying the territory annexed, with the boundaries of the same according to the survey; and they shall cause an attested copy of the entry to be filed with the recorder of such county, which shall be duly recorded in his office, and which shall be conclusive evidence of such annexation in all courts in this State.

1. The board must either grant or refuse the prayer of the petition *in toto;* it can not annex only a part of the territory sought to be annexed, 55 Ind. 576; but if it erroneously annexes only a portion of the territory, the order can not be attacked collaterally, 96 Ind. 143. The order of annexation may, by the early decision, be attacked *collaterally*, and it is not *conclusive*, 58 Ind. 480; but such is not the rule of the later decisions, 72 Ind. 161; 76 Ind. 549; 108 Ind. 14; especially as to mere irregularities that could be successfully attacked on appeal, 108 Ind. 14.

2. Courts can not take cognizance of the exact location of city limits, 76 Ind. 549. That may be shown by parol evidence, 86 Ind. 587.

3. In a proceeding to enjoin it must be averred that the territory was neither annexed by the board, nor by a resolution of the city council, 72 Ind. 161.

4. The board can only hear the proceedings at a *regular session;* at least the petition can not be filed at a *special* session and be then acted upon. If filed at a regular session, no doubt the proceedings could be continued to a special session and then acted upon, 72 Ind. 218.

5. Formerly it was held that no *appeal* lay from the proceedings of the board, and for that reason such proceedings were critically examined, 39 Ind. 159; 55 Ind. p. 582; 58 Ind. 480; 35 Ind. 51, 177; but afterwards it was held that a right of appeal was given by the general statute relating to appeals from a board of county commissioners, 76 Ind. 549; 99 Ind. 117; 90 Ind. 236; 91 Ind. 541; 95 Ind. 245; and now it is given by statute, § 3243.

6. A *school-house* erected by a township trustee upon territory annexed to a city, remains the property of the township, 37 Ind. 415; 60 Ind. 473; but where a town is first incorporated so as to include the school-house, it passes under the control of the city school trustees, 27 Ind. 465; and the title vests in the town, and the town is entitled to a conveyance of it from the township trustee for school purposes, 109 Ind. 559; 86 Ind. 582.

7. Lots platted upon ground already within city limits are subject to taxation as city lots, and need not be annexed, 61 Ind. 29.

8. *Taxes* paid upon land illegally annexed can not be recovered back *after six years* from the time of payment of each installment, 112 Ind. 344; 86 Ind. 587; 103 Ind. 526.

9. The owner of *agricultural land* can not question the right of a city to tax such lands in an action to restrain the city and the board of commissioners from annexing contiguous territory, 55 Ind. 515.

Commissioners' Order-Book Entry.

Comes now the city of ———, of the State of Indiana, by X. L., her attorney, and files the following certified petition, to wit:

[*Set out the petition and the clerk's certificate.*]

And at the same time, said city files proof of the publication of the following notice, viz.: [*Set out the notice and proof of publication*], by which it is shown to the satisfaction of this court, that notice of the intention of said city to apply to this court for the annexation of the territory, therein described, to said city was duly given, by publication in the *Daily Argus*, of said city, for thirty days previous to the first day of the present term of this court. And at the same time said city files a plat of the lands and territory proposed or desired to be annexed to said city.

The court having heard the evidence, finds in favor and grants the prayer of said city, that the territory described in said petition and map is unplatted and contiguous to the present territory and boundary line of said city; that the same ought to be annexed to and incorporated within said city; and that the reasons for the annexation of said territory as set forth in said petition are true.

It is therefore ordered, adjudged, and decreed that the following territory, described in said petition, situate within the county of ———, and State of Indiana, viz.: [*Describe it*], be and the same is hereby annexed to and incorporated within the corporate limits of said city of ———, and that the boundary lines and the jurisdiction of said city are hereby extended around and over said territory as above described.

The county auditor is ordered to file a certified copy of this order, accompanied by said map, with the recorder of this county, and to file and preserve the original petition and proof of publication. The costs of this proceeding, taxed at $———, are hereby adjudged against said city.

ARTICLE 7—FIRE DEPARTMENT.

SEC.

3198. Fire wardens.
3199. Regulation to prevent fires.
3200. Fire engines and houses.
3201. Power of chief engineer and assistants.
3202. Privileges of firemen.

SEC.

3202*a*. Exemption from juries and militia.
3202*b*. Act cumulative.
3202*c*. Exemption from city tax.
3203. Destruction of buildings.

[1867, p. 33. Approved and in force March 14, 1867.]

SEC. 3198. Fire wardens. 72. The councilmen, by virtue of their office, shall be fire wardens, or the common council may appoint one or more fire wardens; and all fire wardens shall have power, at all reasonable hours, to enter into and examine all dwellings, out-houses, lots, and yards in their respective wards or in said city, to inspect all places wherein fire is used, and to ascertain how ashes are kept and disposed of.

Questions touching the removal of *ashes* have arisen in the following English cases: 2 M. & W. 677; 1 Exch. 845; 2 H. & N. 45; L. R. 2 Q. B. Div. 145; L. R. 2 C. P. Div. 391.

SEC. 3199. Regulation to prevent fires. 73. The common council shall have power to regulate the construction of chimneys, hearths, ovens, the erection of stoves and stove-pipes, boilers and apparatus used in manufactories and in buildings, and cause the same to be removed or made secure when considered dangerous; to compel

owners and occupants of houses and buildings to make scuttles in the roofs thereof, and stairs or ladders leading to the same.

See § 3106, clause 32, *notes;* and § 3155, *notes.*

This section is valid, 35 Ark. 352. The city may prevent the storage of large quantities of straw within the thickly populated parts of the city, 85 Ind. 276.

Sec. 3200. Fire engines and houses. 74. The common council may procure fire engines and all other apparatus necessary for the extinguishment of fires, and have the charge and control of the same, and shall provide engine and other houses for their preservation and security; shall organize, from reputable citizens, fire and hook and ladder companies and companies auxiliary thereto, and make rules for their government and regulation, with such penalties for neglect and misconduct as shall be deemed proper. They may remove members of such companies, and appoint others in their stead.

1. See § 3106, clause 30. The city is not liable for a failure to furnish adequate fire engines; nor for failure to take any precautions against fires, 29 Ind. 187; nor for the negligence of its fire department 87 Ind. 334. (See the many cases cited in this last citation;) 69 Pa St. 420; 19 Ohio St. 19; S. C. 2 Am. R. 368; 104 Mass. 87; 122 Mass. 344; 123 Mass. 311, S. C. 25 Am. R. 90; 53 Mo. 159, S. C. 14 Am. R. 444; 25 La. Ann. 390; 38 Conn. 368; 69 Pa. St. 420, 8 Am. R. 272; 1 Black (U. S.) 39; nor for the acts of a volunteer association, 38 Conn. 225, S. C. 9 Am. Rep. 395; 59 N. H. 79; 63 Ia. 447; 47 N. J. L. 406; 19 S. C. 412; 28 W. Va. 233.

2. A city has the inherent power, without a special statute authorizing it, to purchase fire apparatus, 106 Ind. 129; 38 Kans. 726; 16 Fed. Rep. 910. The purchase may be on credit, 60 Ind. 504. It may make a binding parol contract for such apparatus; but if the contract price exceeds fifty dollars, it must be in writing; but a resolution entered of record, accepting a written proposition, satisfies the statute of frauds, 107 Ind. 231.

3. The city may purchase fire *apparatus* for *volunteer* fire *companies*, 27 Vt. 70; 19 Pick. 485; or it may repair apparatus owned by such companies, 19 Pick. 485; 37 Vt. 40; or their engine houses, 28 Mo. 488; 12 Me. 403; 7 Cow. 349; 41 N. J. L. 45. So it may accept a bequest for a fire engine, 9 Pa. 433.

4. An abandoned fire-engine house, rented for other purposes, can not be sold under execution upon a judgment against the city, 5 Bull. 684.

Sec. 3201. Power of chief engineer and assistants. 75. The chief engineer shall have the superintendence of the fire department. He shall see that all apparatus for the extinguishment of fires, belonging to the city, is kept in proper order, and, from time to time, report to the common council the condition of the same, and the repairs or additions thereto to render the department efficient. He shall appoint a first and second assistant engineer, with the advice and consent of the common council, who shall act under his directions. Said engineer and assistants, when clothed with their proper badges, shall have authority to require any person present, and not attached to any fire company, to work in extinguishing the fire, or in aiding to save property from destruction or injury, in such places and in such manner as the said engineer or assistants shall direct; and to order all bystanders who are unemployed, or whose assistance is useless, to remove to such

distance as the said engineer or assistants may prescribe. Said engineer and assistants shall have all the power of police officers, during the continuance of a fire, to suppress disturbances, and to arrest any person who may commit any breach of the peace, or any depredation or injury to the property of another, or who shall refuse to obey any order or direction lawfully given by said engineer or his assistants, and to conduct the offender before the mayor, or other proper magistrate, or, if necessary, to commit him to the county prison or jail until a hearing can be had.

1. The city can not create a fire board, and confer upon it the powers of the chief of the fire department, so as to prevent him from exercising them, 100 Ind. 15.

2. An ordinance provided that any person who should refuse to obey an order at a fire given by any officer duly authorized, "may be arrested and detained in custody *until the fire is extinguished*." This ordinance was held unconstitutional, because the person arrested is deprived of his liberty without due process of law and because his right to a trial by jury is invaded, 16 Minn. 431.

Sec. 3202. Privileges of firemen. 76. The engineer and assistants of the fire departments, fire wardens, and firemen, and members of all other auxiliary companies to the fire department established by the common council, shall have their names registered with the clerk of the city; and his certificate of such registry shall exempt such persons, for the current year, from serving on juries in all courts, and in the militia, except in case of war, invasion, or insurrection.

1. For farther privileges of firemen, see § 3202*a*.

2. A city is liable to a fireman for a defect in its streets, whereby he is injured in driving to a fire. 96 Ind. 50; or by a defective fire engine, 81 Ind. 166; but not for a failure to suppress a manufactory of fireworks, under an ordinance forbidding it, in which a fireman assisting when it is on fire to put out such fire is injured, 117 Pa. St. 414; nor for falling walls negligently permitted to stand, 117 Ind. 126; 12 La. Ann. 481.

[1 R. S. 1852, p. 298. Approved May 13, 1852, and in force May 6, 1853.]

Sec. 3202*a*. Exemption from juries and militia. 1. Active members of any fire company organized under the corporate authority of any city or town shall be exempt from the performance of militia duty in time of peace and from serving as jurors. [R. S. 1881, § 4901].

Sec. 3202*b*. Act cumulative. 2. This act shall be taken as cumulative. [R. S. 1881, § 4902.]

Sec. 3202*c*. Exemption from city tax. 3. The real and personal property and the polls of active firemen of regularly organized fire companies, who shall have done the duty of firemen for one year preceding the time of listing, to an amount not exceeding five hundred dollars, shall be exempt from the payment of city or corporation taxes. [R. S. 1881, § 4103.]

The mere fact that volunteer firemen render services in extinguishing fires does not render the city liable to pay them for their services, 20 Fla. 100; nor is the city liable to a fireman illegally discharged by the chief, 63 Md. 336. But see 39 Ind. 373.

[1867, p. 33. Approved and in force March 14, 1867.]

Sec. 3203. Destruction of buildings. 77. When any building in the city is on fire, or any building adjacent thereto is liable to take and convey fire to other buildings, to the great destruction of property, it shall be lawful for the chief engineer, or engineer acting as such, with the concurrence of the mayor or any five councilmen, to take down, blow up, or destroy the same. And no action shall be maintained against any person therefor; but the person owning or having an interest in such building may, within three months thereafter, apply, in writing, to the common council to assess the damages sustained thereby; and the common council shall appoint three reputable freeholders to determine the amount of damages done to the property of the complainant by the destruction of such building. Such assessment shall be made under oath, and subscribed by the persons making the same, and filed with the clerk of the city within ten days from the date of their appointment; but the complainant or corporation may, within twenty days thereafter, appeal therefrom to the circuit court of the proper county. The damages awarded by the common council, or by the judgment of such court, shall be added to the next annual levy, and collected with the general tax, and paid over to such claimant.

1. The right to destroy buildings existed at common law, and the owner was entitled to no compensation for their loss, 2 Ind; 35; 100 Ind. 575; 97 U.S. 659; 12 Coke Rep. 63, 13; 1 Dyer, 36*b*; 4 D. & E. (T. R.) 797; 1 Dall. 337; 15 Vin. Abr. title "Necessity," pl. 8; 2 Kent Com. 338; 39 Ia. 575, S. C. 18 Am. R. 46; 8 Met. 462; 18 Wend. 126; 17 Wend. 285; 101 U. S. 16; 23 N. J. L. 9, 590; 21 N. J. L. 248, 714; 120 U. S. 227 (military necessity); 2 Denio, 461; 50 Tex. 614; 3 Cal. 69; 1 Cal. 355; 13 Minn. 38; 11 Cush. 433; 16 Gray, 297; 51 Cal. 52; 33 Wis. 314.

2. The chief engineer or the acting engineer must concur with the mayor or with five councilmen that it is necessary to destroy the building, in order to create a liability on the city under this statute; and if the chief or mayor alone order the destruction, the city will not be liable, 5 Cush. 269. See 11 Cush. 433. The fact that the building was insured does not affect the right to recover, 24 Wend. 668; 9 Paige, 568.

3. The city is not liable for property destroyed by *mobs*, 12 Ohio St. 375; 13 Blatchf. 289; 13 B. Mon. 559; 16 B. Mon. 184.

ARTICLE 7*A*.—FIREMEN'S INSURANCE.

SEC.
3203*a*. Reports of foreign insurance companies—Tax.
3203*b*. Penalty for failure to report—Revoking license.
3203*c*. "Firemen's pension fund."
3203*d*. "Board of firemen's fund."
3203*e*. Election of board.
3203*f*. President and secretary—Record.
3203*g* Report of firemen.
3203*h*. Report of taxes.
3203*i*. County pays fund to city treasurer.
3203*j*. Fines paid into pension fund.
SEC
3203*k*. Firemen assessed.
3203*l*. Payment to board of trustees—Investment.
3203*m*. Beneficiaries—Examination.
3203*n*. Deficiency of fund.
3203*o*. Pension rates.
3203*p*. Act applies to former pensioners.
3203*q*. How pensions paid
3203*r*. Exemption from seizure.
3203*s*. Act does not repeal tax law applicable to insurance companies.

[1891, 415. Approved and in force March 9, 1891.]

SEC. 3203*a*. Report of foreign insurance companies—Tax. 1. Every fire insurance company doing business in this State, and not organized under the laws of this State, shall, in the months of January and July of each year, report to the auditor of each county in the State, wherein there is a city having a fire department paid by said city, under oath of the president and secretary of such company, the gross amount of all receipts received by such company on account of insurance premiums for insurance upon property in said county for the six months preceding the last day of the last preceding December and June, and of the losses actually paid during the same period, and shall, at the time of making such report, pay into the county treasury of such county one dollar on every one hundred dollars of the excess of said receipts over and above said losses. Any fire insurance company which shall fail or refuse to render an accurate account of its receipts and losses, as herein provided, or to pay the required tax thereon into the county treasury shall forfeit for the benefit of said fund in said county, one hundred dollars for each day such report or payment shall be delayed, to be recovered in an action in the name of the State of Indiana on the relation of the auditor of said county in any court of competent jurisdiction. And in case of such failure or refusal of any such fire insurance company to make report or payments as herein provided, it shall be the duty of such county auditor, within ten days thereafter, to report such failure and refusal to the auditor of State, who shall, upon the receipt of such notice, forthwith revoke all authority or license heretofore granted to such defaulting insurance company to do business in this State, and no further authority or license to do business in this State shall be granted or issued to such insurance company until the county auditor aforesaid shall have certified to the auditor of State that such insurance company has fully complied with the provisions of this act.

See firemen's insurance cases, 13 Q. B. 179; 3 N. Sess. Cas. 394; 13 Jur. 192.

SEC. 3203*b*. Penalty for failure to report—Revoking license. 2. Any county auditor, knowing that any fire insurance company is

doing business in any city in said county, having a fire department paid by said city, contrary to the provisions of this act, who shall fail for ten days after knowledge thereof to report such fact to the auditor of State, shall forfeit and pay for the firemen pension fund in said county for each day's failure after the expiration of said ten days, the sum of twenty-five dollars, to be recovered in an action brought in any court of competent jurisdiction by the board of trustees of the fire department of such city. And if the auditor of State, after receiving notice from the county auditor of any county, that any fire insurance company is doing business in such county contrary to the provisions of this act, shall fail or refuse forthwith to revoke the authority or license of such company to do business in this State, such auditor of State shall forfeit and pay for the benefit of the firemen's pension fund in said county the sum of fifty dollars for each day's failure, the same to be recovered in an action brought by said county auditor in any court of competent jurisdiction in Marion county.

SEC. 3203*c*. "**Firemen's pension fund.**" 3. The sums so paid into the county treasury of each county, as provided in § 1 of this act, shall be set apart and designated as a "firemen's pension fund," and the same shall be held and disbursed for the purposes and objects, and in the manner provided for in this act.

SEC. 3203*d*. "**Board of firemen's fund.**" 4. The regular fire committee of the common council, or the department of public safety, or other proper authority as now provided by law, or as hereafter may be provided by law, having supervision of, or control over paid fire departments of the several cities of this State, and four other persons, members of the fire department in such cities, elected as hereinafter provided, and the successors of each of the above, shall constitute and be the trustees for the distribution of the pension fund provided for in this act, and shall be called the "board of the firemen's fund."

SEC. 3203*e*. **Election of board.** 5. Six members of the fire department shall be nominated for such office of trustee in a convention to be composed of one delegate from each fire company, fire alarm telegraph company, and from the general office belonging to the fire department of any such cities, and called by the chief of such fire department, and convened at least two weeks prior to the election of such trustees. That such election shall be held in the respective houses or headquarters of such fire companies, telegraph department, and general office, and be by ballot cast by the members of said fire department, between the hours of 9 o'clock a. m. and 6 o'clock p. m. on the first Tuesday of January in each and every year hereafter. That every such member shall be entitled to cast only one ballot, and no ballot shall contain the names of more than four persons, and the four persons

receiving the highest number of votes shall be declared elected as such trustees, and hold their office until their successors are duly elected. That the officer in command of any such company, on the day of, and immediately after holding such election, shall canvass, count, and certify in writing the number of ballots cast and the votes received by each candidate for the office of trustee. After signing such certificate said officer shall address and deliver the same to the chief fire engineer of said city, who shall deliver the same to the mayor of said city. That the mayor shall, within three days after receipt of such certificates, open the same and ascertain and determine the total number of votes so cast at said election for the different persons for the office of trustee, as returned by the said officer in command, and he shall issue certificates of their election to the four persons elected as such trustees. In case of a tie vote being received by any two persons for the office of said trustee, such tie vote shall be decided by casting lots or in any other way which may be agreed upon by and between the persons for whom such tie vote was cast. No election shall be set aside for want of formality in balloting by such members, or certifying or remitting the returns of any such election by said officer in charge.

1. Each elector votes for four of the six nominees on one ballot. The Australian system does not apply to this election.

Certificate of Election.

This is to certify, That at an election duly held in the city of ———, and State of Indiana, on the ——— day of ———, 18—, for the purpose of electing four trustees for the board of trustees of the firemen's fund, that A. B. was duly elected to the office of trustee of said board, in and for said city, to serve as such for the term of one year from the ——— day of — —, 18—, and until his successor is elected and qualified.

In witness whereof, I have hereunto set my hand and affixed the seal of the city of ———, this ——— day of ———, 18—.

[Seal.]

Z. X.,
Mayor of the City of ———.

Attest:

X. Z.,
Clerk of the City of ———.

Oath of Office.

State of Indiana, County of ———, *ss:*

I, A. B., do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as trustee of the board of trustees of the firemen's fund of the city of ———, and State of Indiana, according to law and the best of my ability. So help me God.

A. B.

Subscribed and sworn to before me, this ——— day of ———, 18—.

[Seal.]

Z. X.,
Mayor of the City of ———.

Election Notice.

Notice is hereby given that an election will be held on the ——— day of ———, 18—, between the hours of 9 a. m. and 6 p. m., in the city of ———, State of Indiana, at the following places: [*Name the places,*] for the purpose of electing four trustees of the board of trustees of the firemen's fund of the city of ———, State of Indiana.

Dated at ———, ———, 18—.

R. X.,
Chief of the Fire Department
of the City of ———.

Election Return.

This is to certify that at an election held on the ——— day of ———, 18—, between the hours of 9 a. m. and 6 p. m., at the ———, in the city of ———, and State of Indiana, for the purpose of electing four trustees of the board of trustees of the firemen's fund of said city, the following ballots were cast, and votes received, for the persons named, to wit:

A. B., ... ———
C. D., ... ———
E. F., ... ———
G. H., ... ———
I. J., ... ———
K. L., ... ———

Dated at ———,———, 18—.

L. X.,
Inspector.

Sec. 3203*f*. President and secretary—Record. 6. The president of the fire committee, or the president of the public safety, or the president of any other board of authority, which shall be at the head of such fire department, shall be the president of said board of trustees of the firemen's pension fund. At the first meeting of the said board of trustees they shall elect some one of their number, or the regular secretary of fire committee of said city or of the department of public safety, as the case may be, as secretary of said board of trustees. It is hereby made the duty of the secretary to keep a full record of all the proceedings of the said board of trustees, and the board shall make all needful rules and regulations for its government in the discharge of its duty, and shall hear and determine all applications for relief or pensions under this act.

Sec. 3203*g*. Report of firemen. 7. The president and secretary of said board of trustees shall, on the 30th day of June and the 31st day of December of each year, transmit to the county auditor a return, under oath, stating the total number of firemen employed in the department under the supervision of said board.

Report.

To the Auditor of the County of ———:

The undersigned, A. B., as president, and C. D., as secretary of the board of trustees of the firemen's fund of the city of ———, State of Indiana, hereby

report that the total number of firemen employed in the fire department of said city, on the 31st day of December, 18—, was ———.

A. B.,
C. D.

Subscribed and sworn to this ——— day of ———, 18—.
[Notarial Seal.]

L. X.,
Notary Public.

Sec. 3203*h*. Report of taxes. 8. The county treasurer of each county shall, on the first day of January and July in each year, make out and deliver to the board of trustees of the fire department in each city in said county having a fire department paid by such city, a statement showing the name of each fire insurance company which have paid taxes into the county treasury of such county as in this act provided, and the amount paid by each of such companies, and failing to do so, said county treasurer shall forfeit and pay, for the benefit of such firemen's pension fund in such county, the sum of five hundred dollars, and the same may be recovered in an action upon his official bond in any court of competent jurisdiction.

Report.

To the Board of Trustees of the Firemen's Fund of the City of ———:

The undersigned, treasurer of the county of ———, and State of———, hereby certifies that the following amounts have been paid into the treasury of said county from the first day of January to the first day of July, 18—, by the persons named, to the credit of said fund, viz., American Fire Ins. Co.

$———.

Dated at———, 18—,

N. Y.,
County Treasurer.

Sec. 3203*i*. County pays fund to city treasurer. 9. The county treasurer of each county shall, on the first day of January and July in each year, pay over to the city treasurer of each city in said county having a fire department paid by such city, their amount of the firemen's pension fund then on hand in said county treasury, and the city treasurer so receiving the same shall be the custodian thereof, and shall disburse the same as in this act provided: *Provided*, That where the county treasurer is also *ex officio* treasurer of any city in said county, such county treasurer shall be the custodian of such fund. *And provided further*, That where there are two or more paid fire departments in any county, the county treasurer shall distribute the fund received by him between them in proportion to the amounts annually paid out by each of said departments to its firemen.

Sec. 3203*j*. Fines paid into pension fund. 10. The director, person or persons having control and charge of the fire service in said cities may impose fines upon any member of the fire depart-

ment, in any such cities, by the way of discipline or punishment, detain and collect the same from the pay or salary of such members, and such fines, together with all rewards in money, fees, gifts, and emoluments that may be paid or given specially to said fire departments, or any member thereof, "except when allowed to be retained by such member, or given to endow a medal or other permanent or competitive reward," and all proceeds of suits for penalties for the violation of any provision of any statute of this State or ordinance of said cities, with the execution of which the said fire department, or any of its officers or members, is now or hereafter may be charged, and any license or other fees payable under the same, also all witness fees of every nature whatsoever, when the salary of any member of said fire department is not "affected" by his absence while serving as such witness, shall be paid to and received by the said city treasurer and applied by him to the said pension fund; and the said board of trustees may take by gift, grant, devise, or bequest, any money, real estate, or personal property, right of property, or other valuable thing, and such money, real estate, or personal property, right of property, or other valuable thing so obtained shall in like manner be paid to and applied by such city treasurer to the said pension fund, and also to the use of such fund by deposit, investment, or profit, as hereinafter provided, or as such board of trustees shall direct.

Sec. 3203*k*. Firemen assessed. 11. Every member of said fire department shall be assessed a portion of his salary, and such assessment shall not be less than one-half of one per centum, ormore than one per centum of his compensation, and all such assessment shall be applied to the pension fund: *Provided, however*, That in no case shall the assessment of any person exceed fifteen dollars ($15) per annum. The board of pension trustees shall have discretionary power to fix the rate of assessment within the limits herein prescribed. The secretary of the fire department shall place opposite the name of every member of the fire department on the pay-roll the amount of the assessment on each individual's salary, and the city treasurer shall monthly deduct from the salary of every member of the said fire department the sum set opposite his name, and shall deposit the same to the credit of the pension fund.

Sec. 3203*l*. Payment to board of trustees—Investment. 12. The said board of trustees shall draw such portion of said pension fund from the treasury of such city as it shall deem advisable, and invest the same in the name of the "board of trustees of the firemen's pension fund" in interest-bearing bonds of the United States, the State of Indiana, or any county in this State, or of said cities, or of any township, incorporated village, or other municipal corporations in the said State of Indiana, or without the State when the

power to issue such bonds is derived from either general or special legislative authority. The president or secretary of such board shall collect the interest on all bonds, and place the same to the credit of the said fund. The said bonds shall, before the same are issued to the said board of trustees, be registered in the office of the treasurer of the United States or the State of Indiana, county, city, township, incorporated village, or other municipal corporation in this State or other State issuing the same, and bear upon their face the printed or legibly written fact of such registry, together with the book and page and date and place of such registry. The said board of trustees shall make report to the council of the condition of said pension fund on the first day of January in each and every year.

Report.

To the Common Council of the City of ———:

The board of trustees of the city of ———, State of Indiana, hereby make the following report, for the year ending December 31, 18—:

Amount on hand at last report	$———
Amount of interest received since last report	———
Amount of fines and dues received since last report	———
Amount received from treasurer of ——— county	———
Total	$———
Amount paid X. A., pensioner	$———
Amount paid L. T., pensioner	———
Total	$———
Amount now on hand	$———
Amount invested in United States registered bonds	$———
Amount invested in bonds of the State of Indiana	———
Amount invested in bonds of the city of ———	———
Amount uninvested	———
Total	$———

All of which is respectfully submitted this ——— day of ———, 18—.
By order of the Board of Trustees, of the Firemen's Fund, of the city of ———.

Attest:
N. L.,
Secretary.

N. B.,
President.

Sec. 3203*m*. Beneficiaries—Examination. 13. If any member of the said fire department of any such city shall, while in the performance of his duty, become or be found upon examination by a medical officer, ordered by the director, person or persons having charge or control of the fire department in such city, to be physically, mentally, or permanently disabled so as to render necessary his retirement from all service in the said fire department, such director, person, or persons having charge of said fire service shall retire such permanently disabled person from all services in said fire department, and the board of trustees of the pension fund shall authorize the payment to such permanently disabled person,

monthly, from the pension fund, the sum provided in section 14 of this act, according to the compensation and term of service in said fire department. When any member of said fire department, or retired member on the pension fund thereof, dies from any cause whatever, and leaves a widow, or a child or children under sixteen years of age, the board of trustees shall authorize the payment to such widow, while unmarried, and child or children under sixteen years of age, monthly, from the pension fund, the sum or sums provided in section 14 of this act, according to the compensation and term of service of such deceased member in said fire department; or if any deceased member shall have a dependent mother or father, upon satisfactory proof that such mother or father was dependent upon said deceased member of the fire department, the board of trustees shall authorize the payment to such mother or father, monthly, from the pension fund, the sum provided in section 14 of this act, according to compensation and term of service of such deceased member in said fire department: *Provided, however*, That no pension shall be paid to the mother or father of a deceased member who leaves a dependent widow; and if the widow of any deceased member shall re-marry, her pension shall cease.

Sec. 3203*n*. Deficiency of fund. 14. That if at any time there should not be sufficient money or bonds to the credit of the said pension fund to pay to each person entitled to the benefit thereof the full amount per month as hereinbefore stated, then, and in that event an equal percentage of said monthly payments shall be made to each beneficiary thereof, until said fund is so replenished as to warrant payment in full to each of said beneficiaries.

Sec. 3203*o*. Pension rates. 15. The sums to be paid to permanently disabled members and the widows and orphans, or dependent mothers or fathers of deceased members, shall be as follows: Upon retirement he shall receive twelve-sixteenths of his salary per month, and in the event of his decease while in the service of the fire department or after retirement, the widow shall receive twenty dollars per month, and their children under sixteen years of age, six dollars per month; those in the service of the paid fire department twenty-five years or over, shall upon retirement receive thirteen-sixteenths of their salary per month, and in the event of their decease while in the service of the department or after retirement, their widow shall receive twenty-five dollars per month, and their children under sixteen years of age seven dollars per month; any member of such paid fire department who has been in the service of said paid fire department twenty-five years consecutively, upon making written application to the director, person or persons having charge of the fire service, at his own option, may without medical examination be retired from all services in said fire department, and upon such retirement the board of pension trustees shall authorize the payment to such, monthly,

from the pension fund, an amount equal to thirteen-sixteenths of his salary at the time of retirement. Any member of such fire department who has been in the service of said fire department thirty years, the last twelve years consecutively, may, upon written application to the director, person or persons in charge of the fire service in such city, retire at his own option without medical examination, and the board of pension trustees shall authorize the payment to such member as retired, monthly, from the pension fund, a sum equal to thirteen-sixteenths of his salary at the time of his retirement. The pension of the dependents of such retired members shall be the same in case of death after retirement as provided for dependents who die in the service or after retirement, but the member so retired without special disability shall always receive the same amount of pension as when he retired. In no case shall the amount of any pension exceed seventy-five dollars per month, except the pensioner shall have been in the service of said fire department thirty years, the last twelve consecutively, and in that event they shall receive eighty dollars per month, when thirteen-sixteenths of their salary equals that sum, but no more. The pension of the dependent mother or father of a deceased member who dies in the service of the fire department, shall be the same as that provided for his widow. That any member who may be discharged from the fire department after having served not less than twenty-two years consecutively, shall be placed on the pension roll at ten-sixteenths of their salary at the time of his discharge, provided such discharge is for any other offense than dishonesty, intoxication, or a criminal act, and in the event of the death of such member after retirement, if he leaves a widow or dependents, they shall receive the amounts provided for the dependents of those in sections 12 and 14 of this act. In no case shall the board of trustees depart from the provisions of this section in authorizing the payment of such pensions.

Sec. 3203*p*. Act applies to former pensioners. 16. This act shall apply to all persons receiving pensions from the firemen's pension fund of such cities who have been placed on such pension fund under any former law or laws, except widows or children of deceased members of such fire departments, who shall receive the same as they were receiving at the time of the passage of this act; and, in any application for pension now pending before the board of trustees, the board herein created may, in its discretion, place such dependents in the class of pensioners, as provided in sections 12 and 14 of this act.

Sec. 3203*q*. How pensions paid. 17. The payment of said pensions shall be made by drafts, drawn by the order of said board of trustees, signed by the president and countersigned by the said secretary, but nothing in this act contained shall render any payment of such pension obligatory upon the said board of trustees

or any member thereof, or chargeable as a matter of legal right, and the said board of trustees may at any time order such pension to be reduced or ceased, and a decision of the board on all applications for relief or pensions shall be final and conclusive, and not subject to review or reversal except by such board.

SEC. 3203*r*. Exemption from seizure. 18. No portion of the said pension fund shall, either before or after its order of distribution by the said board of trustees to such disabled members of said fire departments, or to the widow or guardian of child or children, or to the dependent mother or father of a deceased or retired member of such department, be held, seized, taken, subjugated or detained or levied on, by virtue of any attachment, execution, injunction, writ, interlocutor or other order decree, or any process or proceedings whatever issued out of or by any court in this State for the payment or satisfaction, in whole or in part, of any debt, damages, claim, demand, judgment, fine or amercement of such member or his said widow, or guardian of child or children, or of the dependent mother or father of any deceased member; but the said fund shall be sacredly kept, secured, promoted and distributed for the purpose of pensioning the persons named in this act, and for no other purpose whatever. *Provided*, The said board may expend annually not to exceed fifty dollars from such fund for the necessary expenses connected therewith.

SEC. 3203*s*. Act does not repeal tax law applicable to insurance companies. 19. Nothing in this act contained shall be construed as repealing or altering, in whole or in part, any law of this State now in force requiring the payment by insurance companies of taxes into the treasury of the State of Indiana.

ARTICLE 8—CITY COURT.

SEC.		SEC.	
3204.	Election of judge.	3213.	Change of venue.
3205.	Commission—Oath—Bond.	3214.	Trial.
3206.	Style and jurisdiction.	3215.	New trials.
3206*a*.	Criminal jurisdiction.	3216.	Appeals.
3207.	Civil causes, when for trial.	3217.	Execution.
3208.	Seal.	3218.	Marshal's and constable's duties—Fees
3209.	Court of record—Effect of judgment.	3219.	Judge's fees.
3210.	Process and service.	3220.	Judge *pro tempore*.
3211.	Rules—Powers of judge.	3221.	Judge may practice law.
3212.	Sittings of court—Records—Transcript.		

[1891, p. 24. Approved and in force February 20, 1891.]

SEC. 3204. Election of judge. 1. The legal voters of any city, having a population of over five thousand inhabitants, may, at any regular or special election, elect a city judge, if the common council, by proper order duly entered of record, shall have so directed. Such judge shall have the qualifications required of the judge of the circuit court; and shall hold his office for the term of four years, and until his successor shall be elected and qualified.

The adoption of a resolution brings the city under this law. The judge elected under it holds his office until his successor is elected and qualified; but a second resolution is not necessary for the election of such successor, 85 Ind. 471.

Resolution.

Whereas, the city of ——— has a population of over six thousand inhabitants, therefore, it is hereby ordered and resolved that there be elected at the election of city officers held on the first Tuesday in May of this present year, a city judge, to hold his office for the term of four years, and until his successor shall be elected and qualified as required by section one of an act to establish courts in cities having a population of five thousand inhabitants.

[See 85 Ind., p. 472.]

[1875, p. 49. Approved March 12, 1875, and in force August 24, 1875.]

Sec. 3205. Commission—Oath—Bond. 2. When the mayor of such city shall certify to the governor that said city has a population of over six thousand inhabitants, and that a person (naming him) has been duly elected to the office of city judge, the governor shall issue his commission to such judge, as in like cases. But before such judge shall enter upon the discharge of his duties, he shall take and subscribe to the oath of office as required by judges of the circuit courts, and shall execute his bond, with two or more responsible freehold sureties, payable to the State of Indiana, in the penal sum of five thousand dollars, conditioned that he will faithfully, and to the best of his ability, perform the duties of his said office, and that he will pay over to the persons entitled thereto all moneys that may come into his hands by virtue of his office; which bond shall be filed in the office of the clerk of the circuit court of such county.

[1891, p. 24. Approved and in force February 20, 1891.]

Sec. 3206. Style and jurisdiction. 3. The style of such court shall be "The court of the city of ———," according to the name of the city, and shall have original concurrent jurisdiction with justices of the peace and with city mayors in all matters criminal and civil of which justices of the peace or mayors have or may hereafter have jurisdiction. And shall also have original concurrent jurisdiction with the circuit court in civil causes where the amount in controversy does not exceed five hundred dollars, except in actions of slander, libel, foreclosure of mortgage on real estate, or where the title of real estate is in issue, excepting all matters relating to the settlement of decedents' estates, [the] appointment of guardians and all matters connected therewith. Such court shall be governed, so far as may be, by the laws, rules, practice and pleadings governing proceedings in the circuit courts of the State, except as in this act is otherwise provided.

1. The city judge formerly had no *jurisdiction* to arraign, try, and commit a person to jail for a violation of a city ordinance; the mayor alone possessed that jurisdiction; nor could the city confer upon such city judge jurisdiction by

its ordinances, 50 Ind. 569. This court has jurisdiction to try an action for a *recission* of a contract, 76 Ind. 434.

2. If the court erroneously determines *notice to a party* to be sufficient, that determination can not be collaterally impeached, 85 Ind. 471.

[1875, p. 49. Approved March 12, 1875, and in force August 24, 1875.]

SEC. 3206*a*. Jurisdiction of criminal cases. 4. Such city court shall also have original concurrent jurisdiction with the circuit court and justices of the peace in the trial of misdemeanors upon affidavit, and any prosecuting attorney or his deputy, or any attorney at law may appear before such court, and prosecute the pleas of the State, and shall be entitled to the fees allowed to prosecuting attorneys in such cases.

The above section is omitted from the Revised Statutes of 1881.

[1891, p. 24. Approved and in force February 20, 1891.]

SEC. 3207. Civil causes—When for trial. 5. All civil causes triable in the city courts, shall stand for issue and trial when summons shall have been served on the defendant three days or publication had thirty days; but the defendant may appear without process and confess a judgment for any sum not exceeding one thousand dollars.

[1875, p. 49. Approved March 12, 1875, and in force August 24, 1875.]

SEC. 3208. Seal. 6. Such judge shall provide a seal for such court, which shall contain on the face, the words "city court of ———, Indiana" (filling the blank with the name of the city and county). A description of such seal, together with an impression thereof, shall be spread on the records of said court.

[1891, p. 24. Approved and in force February 20, 1891.]

SEC. 3209. Court of record—Effect of judgment. 7. City courts shall be courts of record, whose jurisdiction in criminal cases shall extend throughout the limits of the county wherein they are situated, and in civil cases throughout the limits of the township or townships wherein such city is situated; and all its judgments, decrees, orders, and proceedings shall have the same force and effect as those of the circuit court, except that the same shall not be a lien on real estate, otherwise than as is provided by taking transcript, and the same shall be enforced in the same manner as liens by transcript from justices of the peace in similar cases.

[1875, p. 49. Approved March 12, 1875, and in force August 24, 1875.]

SEC. 3210. Process and service. 8. The process of said court shall be issued by the judge, and shall have the seal affixed and be attested, directed to the sheriff or any constable, or to the marshal of such city, served and returned, and be in form as is or may be provided for process issuing from the circuit court.

Sec. 3211. Rules—Powers of judge. 9. Such judge shall have full power and authority to make and adopt rules and regulations for conducting the business of said court not repugnant to the laws of this State; and shall have all the powers incident to a court of record in relation to attendance of witnesses, the punishment of contempts, and enforcing its orders, and to issue commissions for taking of depositions in cases pending in said court. Such judge shall have full authority to administer oaths, to take and certify acknowledgments of deeds and other instruments, to solemnize marriage, and to give all necessary certificates for the authentication of the records and proceedings in said court.

Sec. 3212. Sittings of court—Records—Transcript. 10. Such court shall be held in such city, at such place as shall be provided therefor; and shall, at all usual business hours, be deemed open for the transaction of any business that may be [brought] before it. Such judge shall be his own clerk, issue all process, and shall keep a true and correct record of all proceedings had before him. The common council of such city shall provide, for the use of said court, well-bound order-books, judgment-dockets, and fee-books, in which said judge shall record all orders, judgments, and decrees, and sign the same, and enter a minute of all judgments and decrees in the judgment-docket, and shall keep a true record of all fees in the proper fee-book in the same manner as such records are kept by clerks of the circuit courts. Such judgments may only become a lien upon real estate, by filing in the office of the clerk of the circuit court a transcript of such judgment; and upon the recording of such transcript in the order-book of said circuit court, such judgment shall become a lien, the same as judgments rendered by such circuit court; and execution may issue on such record of such transcript, in the same manner and for the same reasons as executions are issued on transcripts from the dockets of the justices of the peace; and no real estate, or any interest therein, shall be sold on any writ issued from said city court.

The city judge can not charge the city with the rent of his office, although he held court there because the city had provided no court-room for his court; nor can he make a contract with the city to pay him rent, he being an officer of the city prohibited from making a contract with the city by § 3104, 79 Ind. 166.

Sec. 3213. Change of venue. 11. Changes of venue may be taken from such court, for such causes and in such manner and upon such terms as is provided for changes of venue in causes before justices of the peace; and in causes of which justices of the peace have jurisdiction, the same shall be sent to some justice of the peace competent to try the same; but in cases of changes of venue of all other cases, the same shall be sent to the circuit court of the county, where the same shall be entered upon the docket of such court, and shall be there tried as if originally instituted in said court.

Sec. 3214. Trial. 12. All issues of fact pending in such city court shall be tried by the judge, unless either party demand a jury; which jury shall consist of six qualified voters of the county (unless the party calling for the jury demand twelve jurors), to be summoned by any constable, sheriff, or city marshal, by *venire* issued by the judge.

Sec. 3215. New trials. 13. New trials may be granted by such judge at any time within ten days after rendering judgment, according to the usages in the circuit court, notice of the motion therefor having been given to the opposite party, unless such motion be made in his presence or in the presence of the agent or attorney who conducted his suit; and when a new trial is granted, the judge shall set a day therefor, and shall cause at least three days' notice to be given to the party against whom such new trial has been granted.

A new trial may be waived under this section, 93 Ind. 112.

Sec. 3216. Appeals. 14. Any party may appeal from any final judgment or decree of such city court to the circuit court of such county, within thirty days from the rendition thereof, in the same manner in which appeals are taken from the judgments of justices of the peace; and such appeal shall be deemed to be properly taken if the same would be good if taken from a justice of the peace: *Provided, however*, That when a party shall have acquired any lien by virtue of any transcript filed and recorded, as herein provided, from which an appeal is taken, such lien shall be deemed as continued in force until such cause shall be tried and entered of record in the circuit court.

1. In those counties having a *superior court*, an appeal lies from the city court to them. This was so decided in the superior court of Cass county, in 1876.

2. Perhaps on appeal where the amount in controversy is less then two hundred dollars, the rules as to *costs* touching appeals from a justice of the peace govern; but not if the amount in controversy is over that amount. In the latter instance, although the amount of the judgment is greatly reduced, the winning party recovers his costs, 76 Ind. 434.

Sec. 3217. Execution. 15. Such judge shall issue executions and orders of sale on all final judgments and decrees as follows: On judgments and decrees by confession within four days from the rendition thereof; on all other judgments and decrees, at the expiration of ten days from the rendition thereof, unless the same be stayed as provided by law; and in such cases he shall issue such executions or orders of sale at the expiration of such stay, unless the judgment-plaintiff or his attorney shall otherwise direct. All orders of sale and all executions, when the amount exceeds three hundred dollars, shall be directed to the sheriff of the county; and

all other executions may be directed to any constable of the county or marshal of such city.

Sec. 3218. Marshal's and constable's duties—Fees. 16. Such judge may require the marshal of such city or his deputy or any constable to attend his court during the progress of any trial, to preserve order, to serve process, and to perform the general duties of bailiff to his court. In all cases of which justices of the peace would have jurisdiction, such marshal or constable shall be allowed such fees as are allowed by law in such cases in justices' courts; in all other cases, they shall receive such fees as are allowed by law to the sheriff for like services in the circuit court, to be collected as other costs of suit.

Sec. 3219. Judge's fees. 17. In all cases of which justices would have jurisdiction, such judge shall be entitled to, and receive the same fees as are allowed by law to justices of the peace; in all other cases he shall be allowed one dollar for trial, and a docket-fee of one dollar and fifty cents in each case, and also such fees as are allowed to the clerks of the circuit court for like services; and in cases of jury trials, he shall receive two dollars; and if such trials shall last more than one day, he shall have two dollars per day during the continuance of such trial, after the first day, to be collected as other costs of suit in the courts of this State; and for any other official services such judge may perform, he shall receive such compensation as is usually allowed by law in such cases.

Sec. 3220. Judge pro tempore. 18. If such judge shall desire to be absent from such city for more than twenty days, he may appoint any attorney-at-law of said county as a judge *pro tempore;* which appointment shall be in writing, and spread on the records of said court. Such judge *pro tempore* having first taken the proper oath, and said oath being properly recorded, may, during the absence of said judge, perform all the duties of such judge, and be entitled to the fees that the judge would be entitled to. Such judge shall be responsible, on his bond, for all the acts of such judge *pro tempore: Provided,* That such appointment shall be valid for sixty days only, and no longer.

Sec. 3221. Judge may practice law. 19. There being no stated salary provided for such judge, he may be permitted to practice law in such cases as can not come before him.

ARTICLE 8*A*—METROPOLITAN POLICE.

SEC.		SEC.	
3221*a*.	Board of commissioners of metropolitan police.	3221*h*.	Service of municipal process.
3221*b*.	Appointing powers of board.	3221*i*.	Compensation—Fees—Rewards.
3221*c*.	President and secretary.	3221*j*.	Interfering and obstructing—Penalty.
3221*d*.	Rules and regulations.	3221*k*.	Additional patrolmen.
3221*e*.	Power and authority—Custody and control.	3221*l*.	Challenging, influencing, or soliciting electors.
3221*f*.	Powers of officers and members.	3221*m*.	Bond.
3221*g*.	Expenses charged upon city.	3221*n*.	Marshal's fees.
		3221*o*.	Laws repealed.

[1891, p. 90. Passed over the Governor's veto, and in force March 4, 1891.]

SEC. 3221*a*. Board of commissioners of metropolitan police. 1. In all cities having an enumeration of children between the ages of six and twenty-one years, of fourteen thousand and over, as shown by the official returns of such enumeration made by the several county superintendents of this State to the superintendent of public instruction for the year 1890, there shall be established within and for said cities a board of metropolitan police to consist of three commissioners, to be appointed by the governor, secretary, treasurer, and auditor of State, or a majority of them. The said commissioners to be so appointed shall be of a good moral character, sober and discreet, who are citizens of the State of Indiana, and shall have resided in said city at least five years next preceding their appointment, no more than two of whom shall be of the same political party; one of said commissioners to serve until the first Tuesday of January, 1892, one to serve until the first Tuesday of January, 1893, and one to serve until the first Tuesday in January, 1894, and the term of their successors to be for three years, and each of said commissioners shall be subject to removal by the governor, secretary, treasurer, and auditor of State, or a majority of them. Before entering upon their duties they shall each take and subscribe an oath of office before the clerk of the circuit court of the county within which such city is located, and shall also take and subscribe before such clerk the further oath or affirmation, that in any and every appointment or removal to be by them made, to or from the police force, created and to be organized by them under this act, they shall, in no case and under no pretext, appoint or remove any policeman, officer of police, or other person, because of any political feeling held by such policeman, officer, or other person, or for any other cause or reason than fitness or unfitness of such person, in the best judgment of said commissioners, for the place to which he shall be appointed, or from which he may be removed, and the said oath shall be recorded and placed among the records of said court. Said commissioners shall each give bond in the penal sum of five thousand dollars, payable to the State of Indiana, conditioned for the faithful and honest discharge of their duties, which bond shall be approved by the governor, secretary, treasurer, and auditor of State, or a majority of them. The salary of the board of metropolitan police commissioners of such [cities]

city shall be fixed by the governor, secretary, treasurer, and auditor of State, or a majority of them, which salary shall not exceed six hundred dollars each per annum, payable monthly out of the treasury of such cities.

1. This section is valid except that part requiring five years' residence, 121 Ind. 514. Employment of counsel by police board, 2 Ohio C. C. 406.

2. This and the following sections are repealed so far as they apply to a city of 50,000 or more and less than 100,000 inhabitants. Acts 1891, p. 467.

[1883, p. 89. Passed over the Governor's veto, and in force March 5, 1883.]

SEC. 3221*b*. **Appointing powers of board.** 2. The said board of metropolitan police commissioners shall have power to appoint a superintendent of police, captains, sergeants, detectives, and such other officers and patrolmen as they may deem advisable. Said captains, sergeants, detectives, and such other officers and patrolmen, to be appointed equally between the two leading political parties of said city. Said commissioners shall not have power to appoint more than one patrolman for each ten hundred inhabitants in such city. Such superintendent, captain, officers, and patrolmen shall receive such compensation as the commissioners shall determine: *Provided*, That the compensation for a superintendent shall not be less than one thousand dollars nor more than fifteen hundred dollars per annum: that the compensation for a captain shall not be less than seven hundred dollars nor more than one thousand dollars per annum: that the compensation for a sergeant shall not be less than six hundred dollars nor more than eight hundred dollars per annum: that the compensation for patrolmen shall not be less than five hundred and fifty dollars nor more than seven hundred and thirty dollars per annum. The compensation for all other officers and employes shall be fixed and determined by the commissioners, as in their judgment will be reasonable, and to promote good government in such cities. All persons so appointed shall serve during good behavior, and shall be of good moral character, and be able to speak the English language. Such commissioners shall have power, for cause assigned on a public hearing, and on due notice, according to rules to be promulgated by them, to remove or suspend from office, or for a definite period deprive of pay any officer or member of such police force (except that detectives may be dismissed at any time by said commissioners): and they shall have power to make general and special rules and regulations for the government and discipline of said force, and to make and promulgate general and special orders to said force, through the superintendent of police, who shall be the executive head of the force.

That part of this section requiring the appointment to be made from different political parties is void, 121 Ind. 514.

SEC. 3221*c*. **President and secretary.** 3. The said commissioners shall appoint one of their number to act as president, who shall be

ex officio a member of the board of health of such city, and they shall appoint some person not a member of the board to act as secretary and property clerk, who shall give bond to said commissioners in an amount and with sureties to be approved by said commissioners, conditioned for the safe keeping by, and his rendition upon the order of the commissioners, of all money and other property which shall come into his hands by virtue of his office, and he shall receive such compensation annually as may be determined by said commissioners, not to exceed one thousand dollars per annum, and hold his office at the pleasure of the commissioners.

Sec. 3221*d*. Rules and regulations. 4. The qualifications, enumeration, and distribution of duties, and mode of trial and removal from office of each officer and member of said police force, shall be particularly defined and prescribed by rules and regulations of the commissioners of police.

Sec. 3221*e*. Power and authority—Custody and control. 5. Said commissioners shall, as soon as they shall have been appointed and qualified, assume and exercise the entire control of the police force of such city, and shall possess full and exclusive power and authority over the police organization, government, appointment, and discipline within the city. It shall have the custody and control of all public property, including station houses and city prisons, patrol wagons, books, records, and equipments belonging to the police department. All existing police boards, police officers, police forces, created and maintained by the ordinances or resolutions of the board of aldermen or common council of such city, are hereby abolished, to take effect upon the organization of the board of metropolitan police commissioners of such city.

Sec. 3221*f*. Powers of officers and members. 6. The officers and members of such metropolitan police force shall possess all the common law and statutory powers of constable, except for the service of civil process.

Sec. 3221*g*. Expenses charged upon city. 7. It shall be the duty of the board of aldermen and board of common council of such city as shall have two such boards, and of the common council of such city where but one of such boards exist, to provide, at the expense of such city, all necessary accommodations within such city limits, for station houses, to furnish the same, to warm and light the same by day and night, and to provide food for person or persons detained in any of said station houses, when such food is deemed necessary for such person or persons by the officer in charge. Also to provide for payment, monthly, of the pay-rolls of the officers, members, and employes of such board of metropolitan police commissioners, upon the certificate of the president and secretary of such board as to the correctness of the same; also, for such necessary office expenses, record-books, stationery, printing,

telegraphing, badges, clubs, furniture for rooms, and for the preservation, repair, and cleaning of the buildings and rooms used by the commissioners, for advertising, fuel, light, board of prisoners, it being the intention and meaning of this section that the necessary expenses incurred in the execution of criminal process for offenses charged to have been committed in such city, by the board of metropolitan police commissioners, and the maintenance of the police department hereby created within such city, shall be a charge to such city.

SEC. 3221*h*. **Service of municipal process.** 8. The members of the metropolitan police force shall have the exclusive power, and it shall be their duty, to serve all process within such city issuing from the mayor or city judge's court of such city, and all the duties now performed by the city marshal or his deputy in serving writs, executing orders of said court, attending said court, conveying prisoners to and from the county jail or station houses of such city, for arraignment on trial before said court, or conveying prisoners to the house of correction or workhouse, reform school, or county jail, or other place of punishment and imprisonment, under the judgment, sentence, or order of process of said court, shall be performed by members of said metropolitan police force; and the office of city marshal of such city is hereby abolished; and the duties of such office shall hereafter be performed by the superintendent of the metropolitan police force of such city, or by the captains or sergeants of police, under his direction.

SEC. 3221*i*. **Compensation—Fees—Rewards.** 9. No officer or member of such metropolitan police force shall receive, for any service rendered by him in discharge of any police duty, or as witness in any case before the mayor or city judge for any duty performed as bailiff of such court, any fee or compensation whatever, except the regular fixed *per diem* or yearly allowance made for his services as officer or member of such police force. Any rewards received by any officer or member of such police force shall be turned over to the secretary of said board of commissioners for the support of the metropolitan police, as in this act provided.

SEC. 3221*j*. **Interfering and obstructing—Penalty.** 10. Any person or persons, or corporation, or common council, or other municipal, township, county, or state officer or officers, who shall in any manner interfere with or interrupt the board of metropolitan police commissioners of such city, in any act of theirs, while in the legal discharge of their duties, as provided in this act, or of the police force herein authorized to be created, or shall prevent such board or force from discharging their duties, as defined in this act, shall, upon conviction before the mayor or city judge, or before the circuit or criminal court of said county, be fined not less than one hundred dollars nor more than one thousand dollars;

to which may be added imprisonment for not less than ten days nor more than ninety days, for each separate offense.

This section is valid; but an ordinance covering the same ground is invalid under § 3066*a*, 115 Ind. 581.

[1891, p. 90. Passed over the Governor's veto, and in force March 9, 1891.]

SEC. 3221*k*. **Additional patrolmen.** 11. The commissioners, whenever it shall seem to them discreet, may, on the application of any person or persons, showing the necessity thereof, appoint and swear in any number of additional patrolmen to do duty at any place within said city, at the charge and expense of the person or persons by whom the application may be made; and the patrolmen so appointed shall perform duty only at the place designated by said commissioners. They shall continue in office, at the pleasure of said commissioners, for a term not exceeding one year, shall be subject to and obey the orders, rules, and regulations of said commissioners, and conform to the general discipline of the police force of such city, and to such special regulations as may be made by such commissioners for their government; and the persons so appointed may be removed at any time by the commissioners. The commissioners may, upon emergency, with the written consent of the governor, secretary, treasurer, and auditor of State, or a majority of them and the mayor of said city, appoint such number of special patrolmen as they may deem advisable; but such special patrolmen shall serve for not exceeding seven consecutive days, unless their employment for a longer period shall be approved of by the board of police commissioners of such city, and the said special patrolmen shall be paid in the same manner as herein provided for the regular police force.

[1883, p. 89. Passed over the Governor's veto, and in force March 5, 1889.]

SEC. 3221*l*. **Challenging, influencing, or soliciting electors.** 12. It shall be unlawful for any patrolman or other member of said force, while on duty, to solicit any person to vote at any general or special election, for any candidate or candidates for office, or to challenge any voter, or in any manner attempt to influence any elector at such election, or to be a delegate or candidate to any political convention, or to solicit votes for any candidate for any delegate to any such convention. And any patrolman or other member of said force so offending shall be fined in any sum not less than ten dollars nor more than fifty dollars, and be dismissed from the service.

SEC. 3221*m*. **Bond.** 13. The superintendent, captains, and other officers of said force shall each give bond in the penal sum of from one thousand dollars to three thousand dollars, to be determined by the commissioners, conditioned for the faithful discharge of their several duties.

SEC. 3221*n*. Marshals' fees. 14. The fees fixed and allowed to city marshals shall be taxed and allowed, in all cases where the arrests are made or process served by any of the police force of said cities, in favor of said city, and shall be collected in the same manner as other costs are collected, and shall be paid into the city treasury of said city by the officers or party, or person collecting the same, every three months.

SEC. 3221*o*. Laws repealed. 15. All laws and parts of laws coming in conflict with this act be and the same are hereby repealed.

ARTICLE 8*B*.—HUMANE INSPECTOR.

SEC.
3221*p*. Humane inspector—Salary.
3221*q*. Humane society may demand appointment of inspector.
3221*r*. Inspector's duty.
3221*s*. Pay of inspector.
3221*t*. Powers of inspector.
3221*u*. Files affidavit when statute violated.
3221*v*. Laws repealed.

[1889, p. 135. Approved and in force March 5, 1889.]

SEC. 3221*p*. Humane inspector appointed—Salary. 1. In all cities having a population of 29,000 inhabitants, according to the United States census of 1880, and having boards of police commissioners in charge and in control of the police departments of said city, there shall be appointed by the said boards of police commissioners, as other officers of said police force are appointed, an inspector who shall be known as the humane inspector of said police force. Said inspector shall be appointed as other members of said force are appointed, at a salary of not less than the salary paid the sergeant of said police force, and said appointment shall be made by the board of police commissioners as other appointments by them are made in accordance with section second of this act.

Probably the legislature refers to the metropolitan police act of 1889; but that act was declared void by the supreme court, 118 Ind. 426, which had the effect to leave the metropolitan police act of 1883 in force, 121 Ind. 514. This law may be held to apply to the act of 1883, §§ 3221*a* to 3221*o*.

SEC. 3221*q*. Humane society may demand appointment of inspector. 2. Whenever, in any city having the control of its police department under a metropolitan board of police commissioners, there shall be any regularly incorporated society or organization for the enforcement of the humane laws of the State, and whenever such society, through its authorized president and board of directors shall, in writing, demand the appointment of such humane inspector as provided for in the first section of this act, then it shall be the duty of said police commissioners, within thirty days after the receipt of the petition of the president and directors of said humane society to appoint, in accordance with their rules and in conformity with this act, said inspector.

Sec. 3221*r*. Inspector's duty. 3. It shall be the duty of said inspector, after his appointment, to attend exclusively to the detection and arrest of persons violating the humane statutes of the State: *Providing, however*, He shall be under the control and discipline of said board of police commissioners and its officers as other officers and patrolmen of said police department.

Sec. 3221*s*. Pay of inspector. 4. The pay of said humane inspector shall be provided as the pay of other members of the metropolitan police department is provided.

Sec. 3221*t*. Powers of inspector. 5. Said humane inspector shall have the same power and be under the same restrictions as other peace officers of the State.

Sec. 3221*u*. Files affidavit when statute violated. 6. Whenever any violation of the humane statutes, or any other statute, shall come to the knowledge of said inspector he shall at once, under the direction of the president of the humane society, if said society be duly and regularly incorporated, file an affidavit before the nearest magistrate charging the person so violating said statutes with said violation.

Sec. 3221*v*. Laws repealed. 7. All laws and parts of laws in confliction with this act shall be and the same are hereby repealed.

ARTICLE 8*C*—DRAINAGE.

SEC.		SEC.	
3221*z*.	City may establish drains.	3221*dd*.	Notices.
3221*aa*.	Proceedings in circuit court—Remonstrance.	3221*ee*.	Act liberally construed.
3221*bb*.	Appeal—Establishment.	3221*ff*.	Repairs.
3221*cc*.	Construction.	3221*gg*.	Report of commissioners.
		3221*hh*.	Agreement to assessment.

[1891, p. 304. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 3221*z*. City may establish drains. 1. Whenever the common council of any city shall find it necessary, for the successful drainage of said city, to construct any drain as an inlet or as an outlet, leading into or out of said city, they shall cause a survey of said proposed inlet or outlet to be made and platted, therein showing the commencement, course, distance, terminance [terminus], depth, width, and whether open or covered; also the names of the owners of said lands without said city that will be affected thereby, described in tracts of forty acres, according to fractions of government survey, or less tracts, when they exist, together with a description of any highway that will be benefited by said inlet or outlet. Said survey and plat shall be made by stations of not more than one hundred feet. Said city shall also cause an estimate of benefits and damages of the lands without said city to be made in favor of and against said lands or the owners, including the benefits to said city, and the benefits to any highway affected thereby. Said city shall,

at least three days before making such estimates of benefits and damages, notify in writing the owners of said affected lands, and also when any public highway will be benefited said city shall notify the trustee of the township in which said highway is located, that, on a day and hour named in said notice, that said city, by a committee of three disinterested householders or freeholders of said county, to be selected by said city, will be on said lands, and then and there view the said proposed inlet or outlet, and the lands affected thereby, and that said owners or any of them are requested to be present, with a right to be heard for or against any assessment that shall be made or proposed to be made against said lands. Said committee shall have power to adjourn from time to time, by openly announcing said adjournment, and the time and place to which said adjournment is made. When said committee shall have completed said estimates of benefits and damages, including benefits to said city, said committee shall report the same, in writing to said city mayor, duly subscribed and sworn to as being, in the opinion of said committee, just, fair and equal by and between all the parties, including any estimate of benefits to any highway without said city that will be affected thereby. Upon the return of said report said common council shall approve of said survey and said report, if it be found to be substantially correct, and cause a record of said approval to be duly entered of record in the journal of said city. It shall thereupon be lawful for said city, by order of its council, to file a petition in the circuit court of the county in which said city is situated, therein setting forth that such inlet or outlet is necessary to effectually drain said city; that the survey, plat and assessments of benefits and damages are, as said council believes, correct, just and fair between the parties interested in such drainage. Such petition shall be signed by a majority of the members of said council, to which shall be attached a certificate of the mayor of said city, showing that the petitioners are members of said council, and that they constitute a majority thereof, and which certificate shall be attested by the seal of said city and the signature of the clerk of said city; that said petition shall be conclusive of every fact herein required to be alleged, except as to [the] assessments of benefits or damages, which shall be *prima facie* conclusive thereof. Such petition shall be sufficient to give the court jurisdiction [over] of all the lands therein described without said city to be affected by said proposed drainage, and power to fix a lien thereon for such sum or sums as may be found just and equitable, and to adjudge any damage found to be due any remonstrant, and to determine the rights, liabilities and equities of each and every person or persons, [corporation or] corporations affected thereby.

NECESSARY STEPS IN THEIR ORDER.

1. Resolution for a survey, § 3221z.
2. Survey and report of engineer, §§ 3221, 3221z.
3. Appointment of appraisers or committee, § 3221z.

4. Notice to appraisers of appointment, § 3221*z*.
5. Notice to land-owners, § 3221*z*.
6. Report of appraisers or committee, § 3221*z*.
7. Approval of report, § 3221*z*.
8. Petition to circuit court, § 3221*z*.
9. Notice to land-owners of filing the petition in circuit court, § 3221*aa*.
10. Decree establishing drain and reference to county drainage commissioner for construction, § 3221*aa*.

Resolution for a Survey.

Resolved, that the city civil engineer be and he is hereby ordered to make a survey for a ditch extending from near the corner of Pine and Walnut streets of this city westwardly to Dry creek, county of ———, State of Indiana, which survey shall be accompanied by a plat showing the commencement, course, distance, terminus, depth, width, and whether said ditch should be open or covered; also the names of the owners of the lands without the city that will be affected thereby, described in tracts of forty acres, according to fractions of government survey, or in less tracts when they exist, together with a description of any that will be benefited by said ditch.

Resolved, also, that in the opinion of this council an outlet for the water accumulating at and in the vicinity of the intersection of said streets is necessary to effectually drain said city.

Surveyor's Report to Council.

To the Common Council of the City of ———:

Pursuant to your order I have made a survey and plat of the ditch described herein and in the accompanying plat, which it is proposed to construct; commencing at a point 100 feet east by 32 degrees north of the northeast corner of lot 6 of D. M. Purman's addition to the city of ———, county of ———, and State of Indiana, with station 1, thence as follows, to wit:

No. of Station	Direction.	Distance.	Width at Bottom	Width at Top.	Depth.	Grade.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
Total No.		Total Dis.				Total Grade.

Said proposed ditch will pass through the following described tracts of land situated without the limits of said city and in said county, owned by the persons designated, to wit:

Owner.	Description.	No. of Acres.	Stations.
L. X.	N. W. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	40	14 to 28
X. L.	N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	20	29 to 42
.....	.....	.....	.....
.....	.....	.....	.....

That so much of the Yountsville public highway as lies between the corporate limits of said city and said Dry creek in ——— township, will be benefited by the construction of said proposed drain. Said drain should be covered from station 1 to 49 and open from station 50 to 122, the point at which it ends in the bed of Dry creek.

All of which is respectfully submitted this ——— day of ———, 18—.

A. B.,
City Civil Engineer.

Appointment of Appraisers.

Resolved, that C. D., E. F. and G. H., three disinterested householders and freeholders of this county, and non-residents of this city, be and they are hereby selected and appointed a committee to appraise the benefits and damages that will be caused by the proposed construction of the drain beginning near the corner of Pine and Walnut streets, and extending westwardly to Dry creek, as surveyed and described in the report of the city civil engineer made to this council on the ——— day of ———, 18—. Said committee will meet at the residence of L. N. on the ——— day of ———, 18—, at 10 a. m., for the purpose aforesaid.

Notice of Appointment.

To C. D., E. F. and G. H., greeting:

You are hereby notified that at a regular meeting of the common council of the city of ———, State of Indiana, you were appointed a committee of three to assess the benefits and damages that will be caused by the construction of a ditch beginning near the corner of Pine and Walnut streets in said city and running in a westwardly direction to Dry creek, county of ———, State of Indiana, more particularly described in a report and a plat filed therewith, made to the common council of said city on the ——— day of ———, 18—, by the civil engineer of said city, which report and plat can be obtained by you upon application to the undersigned. You will meet at 10 a. m. on the ——— day of ———, 18—, at the residence of L. N., for the purpose of assessing said damages and benefits, and will hear such persons as are interested and desire to be heard.

In testimony whereof, I have hereunto set my hand and the seal of said city this ——— day of ———, 18—.

[City Seal.]

L. X.,
Clerk of City of ———.

Marshal's Return.

Served the within notice upon the within named C. D., E. F. and G. H. by giving them a certified copy thereof on the ——— day of ———, 18—.

R. U.,
City Marshal.

Notice to Land-owners.

Notice is hereby given to L. N., trustee of ——— township, county of ———, and State of Indiana, and M. O., H. A. and T. B., that C. D., E. F. and G. H. have been selected and appointed as a committee by the city of ———, of said State, to assess the damages and benefits that will be occasioned by the construction of the proposed drain to run from near the corner of Pine and Walnut streets of said city westwardly to Dry creek, as described in the survey and report of the civil engineer of said city, made to the common council thereof on the ——— day of ———, 18—; and that said commissioners will meet at 10 a. m. on the ——— day of ———, 18—, at the residence of L. N., and proceed to estimate the amounts of benefits and damages.

[City Seal.]

L. X.,
Clerk of the City of ———.

Marshal's Return.

Served the within notice upon the persons and the township trustee therein named by giving them a certified copy thereof on the ——— day of ———, 18—.

R. U.,
City Marshal.

Report of the Committee.

To the Mayor of the City of ———:

The undersigned, a committee appointed by the common council of said city, on the ——— day of ———, 18—, to assess the benefits and damages occasioned by the proposed construction of a ditch beginning near the intersection of Pine and Walnut streets in said city of ———, State of Indiana, and running in a westwardly direction to Dry creek, county of ———, and State of Indiana, a more particular description of which is contained in the report and plat of the civil engineer of said city, made to said council on the ——— day of ———, 18—, hereby report that they met at the residence of L. N. on the ——— day of ———, 18—, at 10 a. m., pursuant to the notice of the clerk of said city, and proceeded to examine the lands hereinafter described, to hear all parties interested therein, and assessed the damages and benefits as hereinafter designated, viz:

Names.	Description.	No. Acres.	Amount Damages.	Amount Benefits.
	In ——— County.			
L. X.	N. W. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	40	$25.00	
X. L.	N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	40		$50.00
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Benefits to the Yountsville public highway in ———, township, of said county, from the corporate limits of said city to said Dry creek, $238.00, and to the city of ———, $1,200.00. All of which is respectfully submitted this ——— day of ———, 18—.

C. D.,
E. F.,
G. H.

State of Indiana, County of ———, ss:

We, C. D., E. F. and G. H., do solemnly swear that the above and foregoing appraisements and assessments are, in our opinion, just, fair and equal, by and between all the parties interested, including said city and the estimate of benefits to said public highway without said city that will be affected thereby.

C. D.,
E. F.,
G. H.

Subscribed and sworn to before me, this ——— day of ———, 18—.
[Seal.]

L. X.,
Notary Public.

Journal Entry of Approval.

Resolved, by the common council of the city of ———, and State of Indiana, that the report of C. D., E. F. and G. H., a committee appointed to assess the benefits and damages occasioned by the construction of a ditch from near the intersection of Pine and Walnut streets of this said city to Dry creek, county of ———, and State of Indiana, be and the same is hereby approved, and that the survey of said proposed drain made by the civil engineer of this

city, reported to this council by him on the ——— day of ———, 18—, be and the same is hereby also approved, and both of said reports are hereby adopted. And the city attorney is hereby directed to file a petition in the ——— circuit court, setting forth that an outlet for the waters near the intersection of said streets is necessary to effectually drain said city, and to take such other steps as are necessary to carry out the design and object of said proceedings.

Petition to Circuit Court.

In the ——— Circuit Court, ——— Term, 18—.

In the Matter of the Petition of the City of ———for a Drain. No. —.

To the Honorable ——— Circuit Court:

Your petitioner, the city of ———, of the county of ———, and State of Indiana, respectfully shows that on the ——— day of ———, 18—, it, by a resolution of its common council, directed its civil engineer to make a survey for a drain beginning near the intersection of Pine and Walnut streets of said city, and running thence in a westwardly direction to Dry creek, in said county, for the purpose of obtaining an outlet for the waters accumulated near the intersection of said streets; that said civil engineer made said survey and made a report thereof, accompanied by a plat thereof, to said council on the ——— day of ———, 18—, showing the commencement, course, distance, terminus, depth, width, and that it ought to be an open ditch in part and closed in part; also showing the names of the owners of the lands situated without said city but within said county that would be affected by its construction, which lands were described in tracts of forty acres, according to fractions of government survey, and in less tracts when they existed, together with a description of the Yountsville public highway situated in ——— township benefited thereby, which survey was made by stations of not more than one hundred feet, as follows: Beginning at a point 100 feet east by 32 degrees north of the northeast corner of lot 6 of D. M. Purman's addition to the city of ———, county of ———, and State of Indiana, thence as follows, viz.:

No. Station.	Direction.	Distance.	Width at Bottom.	Width at Top.	Depth.	Grade.

Until it reached Dry creek in said county, a distance of ——— feet.

That on the ——— day of ———, 18—, said council appointed C. D., E. F. and G. H., three disinterested householders and freeholders of said county, non-residents of said city, as a committee to make an estimate of the benefits and damages to the lands without said city that would be affected by the construction of said drain, and appointed a time and place for their meeting, due notice of which time and the place of which meeting was given in writing by the clerk and marshal of said city to all the land-owners hereinafter named, which names were also included in the survey aforesaid described. That said commissioners met at the time and place named in said notices, and after having viewed the premises and heard such evidence as was offered, on the ——— day of ———, 18—, made a written report, under oath, to the mayor of said city, showing that the following described tracts of lands without said city and within said county, owned by the persons named, would be benefited or damaged in the amounts given, viz.:

Owner.	Description.	No. of Acres.	Amt of Damages.	Amt. of Benefits.
L. X.	N. W. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	40	$25.00	
X. L.	N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	40		$50.00
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

Also, that so much of the Yountsville public highway as lies between the corporate limits of said city and said Dry creek, in ——— township, of said county, would be benefited by the construction of said drain in the sum of $238.00 and said city in the sum of $1,200.00. That upon the ——— day of ———, 18—, after the return of said report, the common council of said city approved said survey and said report, and caused a record of said approval to be duly entered of record in the journal of said city.

And your petitioners aver that said drain is necessary to effectually drain said city; that the survey, plat and assessments of benefits and damages are, as said council believes, correct, just and fair between the parties interested in said drainage.

Wherefore, your petitioners pray that said drain be established, that said assessments be approved, and said drain be ordered constructed.

I. H.,
H. I.,
J. K.,
K. J.,
L. M.,
M. L.
Members of the Common Council of the City of —.

State of Indiana, County of ———, *ss:*

I, L. S., mayor of the city of ———, State of Indiana, hereby certify that the above named petitioners, to wit: I. H., H. I., J. K., K. J., L. M. and M. L., are members of the common council of said city, and that they constitute a majority thereof.

In testimony whereof, I hereunto set my hand and cause the seal of said city to be affixed

Done at said city of ———, this ——— day of ———, 18—.

[City Seal.]

L. S.,
Mayor.

Attest:

L. U.,
Clerk of the City of ———.

Sec. 3221*aa*. Proceedings in circuit court—Remonstrance. 2. Whenever the petitioners shall file their petition with the clerk of the circuit court, they shall fix and note thereon the date fixed for docketing thereof, and [if] it shall be made to appear to the court, that notice has been given by publication for twenty days of the proposed motion, to docket said petition, therein giving the names of the owners of said lands to be affected thereby, and the day set for docketing said petition, thereupon the court shall order said petition docketed as an action pending therein. Every person owning lands to be affected by said proposed drain, including the trustee of any township in which is a highway that may be affected thereby, shall have three days after docketing said petition

to file any motion, demurrer, remonstrance or objection he may have to the form and sufficiency of said petition. After the expiration of said three days the court shall consider said motion, demurrer, remonstrance or objection, and if the court find said petition defective and not amendable, it shall dismiss said proceedings at the costs of the petitioners. But if the petition is amendable, without material injury to parties objecting, the court shall give the petitioners a reasonable time in which to amend the same, upon such terms and in such manner as the court may order. If the court shall find said petition sufficient, it shall deny said motion, and overrule such demurrer, remonstrance or objection. That either party may except to the ruling of the court as in other civil cases. All objections to said petition not taken within said three days, shall be deemed waived: *Providing further*, That if any person interested in any benefits or damages shall, within said three days, remonstrate against the assessments of benefits and damages as set forth in said petition, said person or persons shall file in said court his or their remonstrance, showing one or more of the following facts, to wit:

First. That said assessment is too high and disproportionate to other lands affected thereby, or are disproportionate to the benefits assessed against said city.

Second. By any person whose lands are assessed for benefits, that certain other specified tract or tracts of land are assessed too low, according to benefits secured.

Third. By any person or persons whose lands are assessed, that the same are not affected, nor will they be benefited by said proposed drainage.

Fourth. By any person to whom damages are assessed, that the same are inadequate.

Said remonstrance shall be signed by each and every person joining therein, and filed in said court. Thereupon it shall be the duty of said court to order a re-appraisement of benefits and damages, according to the issue tendered by said remonstrance, and shall appoint three good and true men of judgment and discretion and not in any way related to or affected by said proposed drainage, and resident householders or freeholders of said county, who shall, under the order of said court, fixing the time and place of the meeting of said committee, proceed in accordance with said order to view the line of said proposed ditch, and the lands to be affected thereby, and shall fix, determine and assess any or all of the benefits or damages to the owner or owners of said lands, and the benefits against said city, which assessments shall be made on actual view of said lands, and shall, under the order of said court, report the same in writing, duly verified and sworn to, as being, in the opinion of said committee, just, fair and equitable between the parties interested in said proceedings.

Indorsement.

The petitioner sets the ——— day of ———, 18—, for docketing the within petition.

R. L.,
Attorney for Petitioner.

Drainage Notice.

Notice is hereby given that the city of ———, of the county of ———, and State of Indiana, has filed a petition in the ——— circuit court for the drainage of that portion of said city situated in the vicinity of the intersection of Pine and Walnut streets thereof. It is believed that such drainage can be best and most cheaply accomplished by a ditch commencing near the intersection of said streets and running thence in a general westwardly direction until it shall reach Dry creek in said county; and that such drainage will affect the following lands situate in said county and the owners thereof, viz.:

Owner.	Description.	No. of Acres.
L. X.	N. W. ¼ S. W. ¼ S. 11, T. 24 N., R. 4 E.	40
X. L.	N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	40
R. Z. Bruner, trustee of ——— tp. of said county.	All that part of the Yountsville public highway situated between the corporate limits of said city and said Dry creek.	

Notice is also given that on the ——— day of ———, 18—, the day set by indorsement on said petition, a motion will be made by said city in said court to docket said petition, and for such further proceedings as the court may decree.

Dated ———, 18—.

The City of ———,
Per S. R.,
Clerk of the City of ———.

[City Seal.]

[Proof of publication should be made by the affidavit of the printer.]

Remonstrance.

In the ——— Circuit Court, ——— Term, 18—.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

The undersigned, X. L., hereby shows to the court that he is the owner of the following described real estate situated without said city, but within the county of ———, and State of Indiana, to wit: The N. E. ¼ N. W ¼ Sec. 11, T. 24 N., R. 4 E., containing 40 acres, described and assessed in said petition of said city, and he hereby remonstrates against said assessment for the following reason, to wit:

(1) That said land is assessed with $600.00 benefits, which is too high an assessment and is disproportionate to all the other lands assessed and described in said petition, which are assessed with benefits in the sum of $8,100.00.

(2) *or*, That the lands without said city affected by said proceedings are assessed in the aggregate sum of $6,200.00 benefits, while said city is assessed with only $2,500.00 benefits; that lands so without should be assessed only in the sum of $4,000.00 benefits and said city with $4,700.00 benefits.

(3) *or*, That the land above described, owned by your remonstrator, is assessed with $168.00 benefits, while the N. E. ¼ S. W. ¼ Sec. 11, T. 24 N., R. 4 W., 40 acres, owned by L. X., is assessed with only $22.00 benefits; while in fact your remonstrator's land, above described, should be assessed with only $100.00 benefits, and the said land of L. X. with $90.00 benefits.

(4) *or*, That your remonstrator's land, above described, is assessed with $92.00 benefits, while in fact said land is not affected nor will it be benefited by said proposed drainage.

(5) *or*, That your remonstrator's land, above described, is awarded only $20.00 damages, which is entirely inadequate; while in fact said land will be damaged by said proposed drain in the sum of $100.00.

Wherefore he prays for a re-assessment of damages and benefits that will be occasioned by the construction of said drain. And he prays for all other proper relief.

X. L.,
Per A. T., Attorney for the Remonstrator.

Order-Book Entry.

In the Matter of the Petition of the City of ——— for a Drain.

Comes now X. L., by A. T., his attorney, and files a remonstrance to the petition of said city in these words: [*Here insert*]; and thereupon the court orders a re-appraisement of the benefits and damages in this, to wit:

(1) Whether the following tract of land, situated ———, without said city but within the county of ———, and State of Indiana, owned by said X. L., and assessed with $600.00 benefits, is assessed disproportionately to all the other lands assessed with $8,100.00 benefits, viz.: N. E. ¼ of N. W. ¼ Sec. 11, T. 24 N., R. 4 E., containing 40 acres.

or, (2) Whether the lands without said city, assessed with $6,200.00 benefits, are assessed in a disproportionate amount to the $2,500.00 benefits assessed against said city.

or, (3) Whether the following tract of land owned by said X. L., situated without said city but within the county of ———, and State of Indiana, to wit: N. E. ¼ of N. W. ¼ of Sec. 11, T. 24 N., R. 4 E., containing 40 acres, assessed with $168.00 benefits, is assessed in a greater sum according to the benefits that will be derived from a construction of said proposed drain than the N. E. ¼ of S. W. ¼ Sec. 11, T. 24 N., R. 4 E., containing 40 acres, owned by L. X., assessed with $22.00 benefits, will be so benefited by said proposed drain.

or, (4) Whether the N. E. ¼ of N. W. ¼ Sec. 11, T. 24 N., R. 4 E., situated without said city, but within the county of ———, and State of Indiana, owned by said X. L., and assessed with $92.00 benefits, will neither be affected nor benefited by said proposed drain.

or, (5) Whether the award of $20.00 damages to the N. E. ¼ of N. W. ¼ Sec. 11, T. 24 N., R. 4 E., containing 40 acres, situated without said city but within the county of ———, and State of Indiana, owned by X. L., is sufficient in amount for the damages said land will sustain by the construction of said drain.

And the court hereby appoints N. Y., Y. Z. and W. L., three good and true men of judgment and discretion, and not in any way related to or affected by said proposed drainage, and resident householders and freeholders of said county, to make a re-appraisement of the benefits and damages that will be occasioned by the construction of said proposed drain, in accordance with this order. Said appraisers will meet at the residence of L. N., near the line of said proposed drain, on the ——— day of ———, 18—, at 10 a. m., and shall make said assessment on actual view of said lands, according to the issue stated in this order, and report the same in writing by the ——— day of ———, 18—, duly verified and sworn to, to this court. The clerk will issue to said appraisers a certified copy of this order and notice of their appointment and the time and place of their meeting.

[A certified copy of this order should be given to the appraisers appointed therein, and the following notice served on each of them:]

Notice of Appointment.

To N. Y., Y. Z. and W. L.: You are hereby notified that on the ——— day of ———, 18—, you were appointed by the ——— circuit court to appraise the benefits and damages accruing to certain lands by reason of the construc-

tion of a proposed ditch by the city of ———; and were ordered to meet at the residence of L. N., near the line of said proposed drain, on the ——— day of ———, 18—, at 10 a. m., to make said assessment. A more particular description of the premises to be viewed and the duties required of you by said court is given in a certified copy of said order herewith read to you and left with the said Y. Z.

In testimony whereof, I have hereunto set my hand and the seal of said court this ——— day of ———, 18—.

[Court Seal.]

U. X.,
Clerk of the ——— Circuit Court.

Sheriff's Return.

Served the within notice by giving a certified copy thereof to each of the within named persons on the ——— day of ———, 18—. I also read the copy of the order therein referred to to each of said persons, and left the same with Y. Z.

X. U.,
Sheriff ——— Co.

Report of Appraisers.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

To the Honorable ——— Circuit Court:

The undersigned appraisers, appointed by this honorable court on the ——— day of ———, 18—, to appraise the benefits and damages according to the terms of the order of this court made and entered of record upon said day in Order-Book 22, on pages 426, 427 and 428, in the matter of the petition of said city, hereby report: That they met at the residence of said L. N., on the ——— day of ———, 18—, at 10 a. m., and proceeded to view the lands described in said order, and after hearing such evidence as was offered, they report as follows, to wit:

(1) That the N. E. ¼ of N. W. ¼ Sec. 11, T. 24 N., R. 4 E., situated without said city but within the county of ———, and State of Indiana, assessed with the sum of $600.00, is not assessed too high, and is not assessed disproportionately to the other lands assessed at $8,100.00; [*or*, should be assessed in the sum of $200.00, and that the remaining $400.00 should be apportioned among all the other lands, and added to their present assessments, so as to make such assessments as follows, to wit:

Owner.	Description.	No. Acrs	1st Assessment	Deduction.	Addition	Reassessment.
	In ——— County.					
L. X.	N.W.¼ N.W ¼ S.11, T. 24 N.,R.4 E.	40	$600	$400		$200
X. L.	N.E.¼ N.W ¼ S.11, T.24 N.,R. 4 E.	40	250		$25	275

or, (2) That the lands without said city are not assessed disproportionately to the benefits assessed to said city; [*or*, that the aggregate sum of the benefits to the lands without said city are only $4,000.00, while the benefit to said city is $4,700.00. Upon this basis of benefits they have proportionately reduced the assessment of each separate tract of land without said city as follows, to wit:

Owner.	Description.	No. Acres.	Amt of 1st Assessm't	Amt of Reduction.	2nd Assessm't.
	In ——— County.				
L. X.	N.W. ¼ N.W. ¼ S.11, T.24 N.,R. 4 E.	40	$400.00	$123.17	$276.83
X. L.	N.E. ¼N.W.¼ S. 11, T. 24 N.,R.4 E.	40	127.18	27.22	99.96

or, (3) That the following tract of land, owned by X. L., assessed with $168.00 of benefits, to wit: N. E. ¼ N. W. ¼ Sec. 11, T. 24 N., R. 4 E., in ——— county, and State of Indiana, containing 40 acres, is assessed in a greater sum according to the benefits than is the following tract owned by L. X., and assessed with $22.00 benefits, to wit: N. E. ¼ N. W. ¼ Sec. 11, T. 24 N., R. 4 E. in said county, containing 40 acres; and that the tract of said X. L. should only be assessed with $116.00 benefits, while the tract of said L. X. should be assessed with $74.00 benefits.

or, (4) That the N. E. ¼ N. W. ¼ Sec. 11, T. 24 N., R. 4 E., containing 40 acres, situated within the county of ———, and State of Indiana, but without said city, owned by X. L., assessed with $92.00 benefits, will be neither affected nor benefited by said proposed drain; [*or*, will be benefited in that amount of benefits.]

or, (5) That the N. E. ¼ N. W. ¼ Sec. 11, T. 24. N., R. 4 E., containing 40 acres, situated without said city, but within the county of ———, and State of Indiana, owned by X. L., and assessed with $20.00 damages, is sufficient in amount for the damages said land will sustain by the construction of said proposed drain; [*or*, is not sufficient damages, and that said land will sustain $100.00 damages by reason of the proposed construction of said drain, and they re-assess the benefits and damages as follows, to wit:

Owner.	Description.	No. of Acres.	Amt. of 1st Assessment.	Amount of Increase. .	2nd Assessment. . . .	Amt. of Damages. . .
	In ——— County.					
L. X.	N.W.¼N.W.¼ S.11,T.24 N.,R.4 E.	40	.....	.....	.....	$129.00
X. L.	N.E.¼N.W.¼S.11,T. 24 N., R.4 E.	40	$220.00	$3.52	$220.50	.....
N. C.	N.E.¼ S.E.¼ S.11,T.24 N., R.4 E.	40	.....	.....	.....	28.00

That the assessment upon the Yountsville public highway, from the corporate limits of said city to said Dry creek, situated in ——— township of said county, was assessed as benefited, in the amount of $492.00, which assessment is increased $23.00, making the second assessment of benefits thereto $515.00; and the benefits to said city, assessed at $1,200.00, is increased $52.00, making the second assessment of benefits $1,252.00.

All of which is respectfully submitted this ——— day of ———, 18—.

N. Y.,
Y. Z.,
W. L.

State of Indiana, County of ———, *ss:*

N. Y., Y. Z. and W. L. solemnly swear that in their opinion the above appraisement of benefits and damages is just, fair and equitable between the parties interested in the construction of said proposed drain.

N. Y.,
Y. Z.,
W. L.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Notarial Seal.]

N. U.,
Notary Public.

Sec. 3221*bb*. Appeal—Establishment. 3. Any party aggrieved by said report may within ten days after filing of said report, or at such other time, not less than ten days, as the court may fix, move the court to have any error apparent in the report corrected by said committee, and if necessary the court shall re-refer said report to the said committee with instructions to review and correct their said report, and when corrected and refiled it shall be conclusive of the rights of the parties, unless one or more of the parties affected by said report shall, within a time to be fixed by the court, appeal from such report to the court, and which appeal shall be by the court noted on its docket, and set down for trial by the court. The trial of said cause shall be conducted as other civil cases, without a jury; and if the court find in favor of the remonstrants, the court shall modify the assessments or affirm them as justice and equity may require; and shall assess costs for or against each and every party as in the opinion of said court may be just: *Provided*, That if the commissioners' report of assessments of benefits and damages shall substantially agree with the original estimates as set forth in said petition, and said remonstrants shall not further appeal from the report of said commissioners, the court shall in such case, assess the costs of said review to said remonstrants. If the finding of the court on the trial shall be against the remonstrants, the court shall make an order declaring the proposed work established, and shall approve the assessments as finally determined, and shall order the construction of said drain. The court shall refer the said drain to the drainage commissioner of said county and require him to construct said drain according to the plans and specifications as set forth in said petition and in accordance with the findings and final order of said court. If the findings of the court shall be for or against either party in part, the court shall apportion the cost as justice and equity may require: *Provided further*, That no part of the costs made by said city in its survey, plat or assessments shall be assessed as costs in the construction of said drain, but shall be paid by said city.

Order-Book Entry.

In the Matter of the Petition of the City of ——— *for a Drain. No.* —.

It is ordered that all parties desiring to file motions to correct any alleged error in the report of the committee upon the re-assessment of benefits and damages in this matter, filed on the ——— day of ———, 18—, or to appeal therefrom, shall do so on or before the ——— day of ———, 18—.

Motion to Correct Error.

In the Matter of the Petition of the City of ——— *for a Drain. No.* —.

X. L., one of the parties assessed with benefits in the report of the committee appointed to make a re-assessment of benefits and damages in the above matter, filed on the ——— day of ———, 18—, moves the court to require

them to make the following correction, viz.: That he is assessed as the owner of the S. W. ¼ S. E. ¼ S. 11, T. 24 N., R. 4 E., in ——— county and State of Indiana; when in fact the tract assessed should be the N. E. ¼ S. E. ¼ S. 11, T. 24 N., R. 4 E., said county, as shown by the petition of said city.

N. B.,
Attorney for Petitioner.

Order-Book Entry.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

It is ordered that the committee appointed herein to make a re-appraisement of benefits and damages correct their report, filed on the ——— day of ———, 18—, so as to show that the tract assessed in the name of X. L. is the N. E. ¼ S. E. ¼ S. 11, T. 24 N., R. 4 E., of the county of ——— and State of Indiana, instead of the S. W. ¼ S. E. ¼ of said section 11, and that when said report is corrected they refile it.

Appeal.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

X. L., the owner of the following land, assessed in the report of the committee appointed to make a re-assessment in the above matter, situated in the county of ——— and State of Indiana, viz.: N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E., containing 40 acres, re-assessed with $99.96 benefits, hereby prays an appeal from said assessment on the ground that said assessment is too high, and asks that the same be tried by the court.

N. B.,
Attorney for Petitioner.

Order-Book Entry.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

X. L. having prayed an appeal from the re-assessment of benefits and damages made in this matter, said appeal is hereby granted, and set down for trial on the ——— day of ———, 18—.

Order-Book Entry, Showing Trial and Establishment of Drain.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

Comes now X. L., by his attorney, N. B., and comes the city by its attorney, S. R., and the appeal of said X. L. is now submitted to the court, without the intervention of a jury, for trial; and the court having heard the evidence and argument of counsel, finds against the said X. L. It is therefore adjudged and decreed that said X. L. pay all the costs occasioned by said appeal. [*See below for order establishing drain*], *or*, Finds in favor of the said X. L., and that his said land, to wit: N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E., containing 40 acres, situated in the county of ——— and State of Indiana, assessed with benefits in the sum of $99.96, is assessed too high, and should be assessed with only $21.00 of benefits. It is therefore ordered and adjudged that said re-appraisement shall be so modified as to assess all the lands benefited and damaged as follows, to wit:

Owner.	Description.	Benefits.	Damages.	No. Acres.
	In ——— county.			
L. X.	N. W. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	$152 00		40
X. L.	N. E. ¼ N. W. ¼ S. 11, T. 24 N., R. 4 E.	21 00		40
N. C.	N. E. ¼ S. E. ¼ S. 11, T. 24 N., R. 4 E.		$132 47	40

So much of the Yountsville public highway as lies between the corporate limits of said city and said Dry creek, in the township of ———, is hereby assessed with $194.68 benefits, and said city with $1,489.21 benefits.

And it is ordered that the costs of said appeal be assessed against the said city of ———.

It is therefore ordered, adjudged, and decreed that said drain be and the same is hereby established according to the plans and specifications set forth in the petition of said city, which are in these words: [*Here insert*], and the assessment of benefits and damages as herein determined are approved and declared to be a lien on the lands herein described.

The construction of said drain is hereby referred to the drainage commissioner of this county, and he is hereby required to construct said drain according to the plans and specifications set forth in said petition, and in accordance with the findings and the order of this court.

Order-Book Entry, Establishing Drain where No Objections are Filed.

In the Matter of the Petition of the City of ——— for a Drain. No. —.

Comes now the city of ———, by S. R., its attorney, and shows to the court that on the ——— day of ———, 18—, it filed a petition with the clerk of this court for the establishment of a drain, which petition is in these words: [*Here insert.*]

And said petitioner further shows to the court that by indorsement on said petition it fixed the ——— day of ———, 18—, as the day on which a motion would be made in this court for docketing said petition; and gave notice to all concerned in the construction of said proposed drain, by publication for twenty days in the *Argus-News*, the first publication of which notice was on the ——— day of ———, 18—, and the last on the ——— day of ———, 18—, a daily [*or*, weekly] paper published in the county of ——— and State of Indiana, of its intention to make said proposed motion, which notice is in these words: [*Here insert.*]

And it appearing to the court, in pursuance of a motion made for that purpose, that said petition was docketed on the ——— day of ———, 18—, in this court, and more than three days having expired since the same was so docketed, and no motion, demurrer, remonstrance, or objection to the form, sufficiency, or allegations of said petition having been filed, the court finds that the allegations of the petition are true, and said petitioner having moved for judgment thereon:

It is therefore considered, ordered, and decreed by the court that said petition be and the same is hereby confirmed; that the assessments made therein be and the same are hereby approved, and that the drain therein described be and the same hereby is established.

It is further considered and ordered by the court that the construction of said drain and of all work necessary to carry out the plans and specifications of said petition be and the same are hereby assigned to N. S., drainage commissioner of the county of ——— with directions to construct the same.

Sec. 3221*cc*. Construction. 4. The commissioners charged with the construction of said inlet or outlet, shall proceed to construct the same as hereinbefore provided and ordered. He shall make all necessary assessments and collect the same from time to time as may be required; he shall pay all costs not otherwise adjudged against parties; shall pay all expenses incident to the construction of said inlet or outlet, and such expenses as the court shall deem a proper charge upon the funds in the hands of said commissioner. His assessments made from time to time shall be upon the lands benefited and the assessments against said city, ratably upon the amount of benefits as adjudged by the court, such sums

of money as may be necessary therefor, not exceeding the whole benefits so adjudged upon any one tract or against said city, and require the same to be paid in installments not exceeding twenty per cent. per month, at such times as he shall fix, after thirty days' notice thereof, to be given by personal notice to the owner of said lands, or by one publication in a newspaper published in such city. He may divide the work into such parts as he may deem best, and let the same to the best advantage, in such parts or altogether, as he may determine, and contract for the construction thereof. He shall collect the assessments so made by him and apply the same as herein provided; and for the purpose of making such collections, if not paid as above required, he shall have all the power to distrain and sell personal property which is, by law, conferred upon the county treasurer for the collection of taxes, and for so doing shall be allowed the same fees and costs. He may, if he so determine, bring suit in the name of the State of Indiana, for his use as commissioner of drainage, in any court of competent jurisdiction, to enforce a lien upon any tract or tracts of land for the amount so assessed by him, and also to bring suit against said city in the court making the order for the construction of said inlet or outlet, and which court shall have power to enforce its orders against said city by attachment as for contempt against mayor and common council of said city, or against any other officer of said city who, being required to pay or provide for the payment of said assessments, shall neglect or refuse to obey the order of said court. All judgments and orders obtained may include reasonable attorney fees for services in prosecuting the same, and shall be without relief from valuation or appraisement laws; or he may make his certificate, showing the amount of such assessments against any tract of land, and that default in its payments as required has been made, and file the same with the auditor of the county where[in] such lands are situated, and thereupon the auditor shall place the same upon the succeeding tax duplicate, and the same shall be collected as State and county taxes are collected: *Providing further*, That default made by such city shall be prosecuted in the court where said petition was filed, and which court shall have all like remedies for enforcing its judgments known to the courts of law and equity of the State.

Assessment by Drainage Commissioner.

In the Matter of the Petition of the City of ——— for a Drain.

I, N. S., drainage commissioner of the county of ——— and State of Indiana, directed in the above entitled proceedings to construct a certain ditch in said county, described in the petition of said city filed in said proceedings and the final order of the ——— circuit court made on the ——— day ———, 18—, establishing the same, hereby make the following assessments against the real estate to be affected by said work, the amounts assessed to be paid in ——— installments of ——— per cent. of the amount of each assessment of ——— dollars each, payable on the ——— day of each and every month, commencing on the ——— day of ———, 18—.

Owner.	Description.	Amount of 1st Assessment.	Amount of 2nd Assessment.

N. S.,
Drainage Commissioner.

[There should be as many installments stated in this assessment as there are payments to be made.]

Notice Requiring Payment of Assessments.

In the Matter of the Petition of the City of ——— for a Drain.

Notice is hereby given to all persons against whose lands assessments of benefits have been made by the judgment of the ——— circuit court in the above entitled matter, and to the city of ———, and R. A., trustee of ——— township of the county of ——— and State of Indiana, that undersigned, drainage commissioner of ——— county, has assessed against their lands the following amounts: [*Set out the names of the parties, description of their lands, and amount assessed.*] And requiring that they pay the same to him at ———, in the city of ———, county of ———, State of Indiana, in installments of twenty per cent. thereof per month, the first installment to be paid on or before the ——— day of ———, 18—, and one installment to be paid on the ——— day of each and every month thereafter until the whole sum so assessed is paid.

You are further notified that if said assessments are not paid at the time above stated, in accordance with said assessment, I will proceed to collect the same according to law.

N. S.,
Drainage Commissioner.

Notice of Letting Contract.

In the Matter of the Petition of the City of ——— for a Drain.

Notice is hereby given that until the ——— day of ———, 18—, I, to whom has been assigned the construction of the drain described in the petition of said city and order of the ——— circuit court in the above entitled matter, will receive bids for the construction of said drain.

Said work has been divided into stations of 100 feet in length, and bids for constructing said drain, or any part of it, must be by such stations.

A computation of the number of cubic yards of excavation in each of said stations has been made, and will be furnished to any person interested or bidding on said work.

Said contract will be let to the lowest and best bidder by stations.

Any person to whom a contract is let will be required to enter into a written contract and give bond with surety for the performance of the work, and that he will pay all damages occasioned by his non-fulfillment of his contract.

The right to reject any and all bids is reserved.

Dated this ——— day of ———, 18—.

N. S.,
Drainage Commissioner.

Contract.

This agreement, made and entered into on the ——— day of ———, 18—, by and between S. L. and N. S., drainage commissioner of the county of ———, witnesseth:

That said S. L. hereby agrees to construct a certain drain located in said county, and more fully described in the petition of the city of ———, and the

judgment and decree of the ——— circuit court, in the matter of the petition of said city for a drain; the portion of said drain included in this contract being described as follows:

From station ——— to station ———, being ——— lineal feet.

From station ——— to station ———, being ——— lineal feet, etc., and being the part of said work let to said S. L. on the ——— day of ———, 18—.

Said work to be done and performed in all respects to said petition and judgment now on file in the clerk's office of said court.

Said S. L. hereby agrees to do the said work at the price of ——— cents per cubic yard, and to fully complete the same by the ——— day of ———, 18—.

This contract is made and the money to pay for said labor is to be collected and paid under the provisions of an act concerning the drainage of cities, approved March 6, 1891, which is hereby referred to and made part of this contract; said N. S. acting in his official capacity only.

In witness whereof, the said S. L. and said N. S., as drainage commissioner of ——— county, have hereunto set their hands this ——— day of ———, 18—.

S. L.

N. S., Drainage Commissioner.

Bond of Contractor.

Know all men by these presents, That we, S. E. and U. T., acknowledge ourselves to be indebted and bound unto the State of Indiana in the sum of ——— dollars, for the payment of which we bind ourselves, jointly and severally, by these presents. Conditioned as follows: Whereas, N. S., drainage commissioner of the county of ———, State of Indiana, has this day let to said S. L. the contract to construct a portion of a certain drain in said county, which contract is in writing, bearing even date herewith, whereby said S. L. has contracted to construct the following parts of said drain:

From station ——— to station ———, being ——— lineal feet, for the sum of ——— cents per cubic yard.

Now, if the said S. L. shall fully perform his said contract and pay all damages occasioned by his non-fulfillment thereof, then this obligation to be void; else in full force. Sealed and dated this ——— day of ———, 18—.

S. L., [Seal.]

U. T. [Seal.]

Approved by me, this ——— day of ———, 18—.

N. S.,
Drainage Commissioner.

Certificate of Drainage Commissioner to County Auditor.

To the Auditor of ——— County:

The undersigned, commissioner of drainage for said county, charged by the order of the ——— circuit court with the construction of a certain drain for drainage purposes in said county, hereby certifies that assessments for the construction of said work have been made against lands in said county, as appears below, and owned by the parties named, which assessments have been duly approved by said ——— circuit court, and that the payment thereof, though past due, has not been made, as required by said commissioner.

Owner.	Description.	Amount Due.

Dated ———, 18—.

N. S.,
Drainage Commissioner.

Complaint on Assessment.

In the ——— *Circuit Court,* ——— *Term,* 18—.

The State of Indiana on the Relation of N. S., Drainage Commissioner of ——— *County, vs. A*——— *L*———. *No.* ———.

The plaintiff complains of the defendant and alleges: That on the ——— day of ———, 18—, the common council of the city of ———, of the county of ——— and State of Indiana, adopted a resolution declaring it expedient to construct a drain from within said city to a point without it, for the purpose of draining a certain portion of said city, and to obtain an outlet for that purpose, and ordered the civil engineer of said city to make a survey of the proposed route of said drain and of the lands without said city to be affected thereby, and to prepare a plat thereof; which survey and plat said engineer made and reported the same to said council.

That said council thereupon appointed three disinterested householders and freeholders of said county as a committee to appraise and make an assessment of the benefits and damages that would accrue by reason of the construction of said drain, which appraisement and assessment said committee, after having met on the ——— day of ———, 18—, at a designated place, made and reported in writing, under oath, to said council.

That at least three days before the making such estimates of benefits and damages said city notified in writing all the owners of all of the lands affected by said proposed drain that on the day as aforesaid stated, at a designated place, said committee would meet for the purpose aforesaid.

That upon the report of said committee said council approved it and said survey, and caused a record of said approval to be duly entered of record in the journal of its proceedings, and ordered the city attorney thereof to file a petition, signed by a majority of the members of said council, certified to be such by the mayor of said city under the seal of said city, attested by the clerk thereof, in the ——— circuit court, setting forth that such outlet was necessary to effectually drain said city, which petition, so drawn and signed, said city attorney did file in said court on the ——— day of ———, 18—. That said city fixed and noted on said petition that a motion would be made in said court to docket said petition for a hearing on the ——— day of ———, 18—, and gave twenty days' notice by publication of the proposed motion, therein giving the names of the owners of the lands to be affected by said proposed drain.

That upon said day, upon motion of said city, said petition was duly docketed by order of court for hearing.

That on the ——— day of ———, 18—, said matter came on for a hearing in said court, and such proceedings were had therein that the court confirmed said petition, a copy of which petition is filed herewith, marked Exhibit A, and made a part hereof, declared the proposed drain established and approved the assessments contained in said petition, ordered the construction of said work, and the construction thereof assigned to this relator, a copy of which order is filed herewith, and made a part of this complaint, marked Exhibit B, and required him to construct said drain according to the plans and specifications set forth in said petition [and in accordance with the findings and final order of the court].

That on the ——— day of ———, 18—, the relator, as such commissioner, made an assessment against the lands to be affected by said work, a copy of which is filed herewith and made a part of this complaint, marked Exhibit C, and required that the amounts so assessed be paid in installments of ——— per cent. per month on the ——— day of each and every month, commencing on the ——— day of ———, 18—.

That he gave notice of said assessment, and of the time and place where the required payments should be made, by publication in *Argus-News*, a newspaper of general circulation, printed and published at ———, in said county.

That no part of said sum assessed against the lands of the defendant has been paid, although the time set for its payment has long since passed.

That a reasonable fee for plaintiff's attorney in this action is ——— dollars.

Wherefore the plaintiff demands judgment for ——— dollars, for the use of the relator; that the same be declared a lien against the lands of the defend-

ant described in the assessment, made part of the complaint; that said real estate or so much thereof as may be necessary to pay and satisfy the judgment and costs, be sold as other lands are sold on execution for the satisfaction thereof and for all other proper relief.

L. T.,
Attorney for Plaintiff.

Sec. 3221*dd*. Notices. 5. The filing of the petition and docketing the same, as provided in section one of this act, shall be deemed notice of the pendency of proceedings to all persons whose lands are named in the petition and to said city, and the final order of the court fixing the amount of assessments shall be deemed notice of said liens and a charge against said city. The commissioner charged with the construction of the work shall, as soon as may be after he has been directed to construct said work, make out a notice, wherein he shall state that the work has been established by the court; also the several assessments to the tracts of land, as the same have been finally confirmed by the court, and cause the same to be recorded in the office of the recorder of the county in which said lands are located.

Notice of Assessment to be Filed in Recorder's Office.

In the Matter of the Petition of the City of ——— for a Drain. Notice of Assessment.

Notice is hereby given by the undersigned, drainage commissioner for the county of ———, directed by the ——— circuit court to construct the drain hereinafter described, that on the ——— day of ———, 18—, the city of ——— filed a petition in the clerk's office of the county of ———, State of Indiana, for the construction of a drain, running from near the intersection of Pine and Walnut streets of said city westwardly to Dry creek, within said county, and showing an assessment and appraisement of lands that would be benefited or damaged by such construction, and the several amounts of such benefits and damages, as follows:

Owner.	Description of Lands.	Amount of Benefits.	Amount of Damages.

And that said petition was by said court duly confirmed, said assessment and appraisement approved, and said drain established on the ——— day of ———, 18—.

Dated ———, 18—.

N. S.,
Drainage Commissioner.

Sec. 3221*ee*. Act liberally construed. 6. This act shall be liberally construed to promote the drainage of cities, the reclamation of wet lands, and the improvement of the public health. Collection[s] and assessments shall not be defeated by reason of any defect in the proceedings accruing prior to the judgment of the court, but said judgment shall be conclusive that all prior proceedings were regular and according to law; nor shall any person, at

any stage of the proceedings herein, be permitted to take any advantage of an error, default or informality, unless the person complaining is directly affected thereby. If the court shall deem it just to release any person, or modify any assessment or liability, such release or modification shall in no manner affect the rights or liabilities of any other person.

Sec. 3221*ff*. Repairs. 7. Repairs shall be governed by the law in force in relation to repairs of ditches as in other cases by law may be provided: *Provided*, That in cases of emergency said city shall have the right to open up or clean out said inlet or outlet, for which the proper officer having the keeping of said inlet or outlet in repair shall assess benefits or damages for or against said city, or for or against the land-owners or the highway, if any are affected thereby, and shall fully pay said city therefor, less its benefits.

See Acts 1885, p. 141, § 10; El. Supp. § 1193.

Sec. 3221*gg*. Report of commissioner. 8. On the completion of said inlet or outlet, the commissioner having the construction thereof shall make and file in said court a report, therein showing the amount of moneys by him received, and from whom and at what time he received the same. He shall also show when, to whom, and for what said moneys were paid, with proper vouchers therefor, excepting for incidental expenses. He shall also show the number of days, giving day and date of time by him devoted to the construction thereof, and which report shall be duly verified by the oath of said commissioner, signed and acknowledged according to law.

Report.

In the ——— *Circuit Court*, ——— *Term*, 18—.

In the Matter of the Petition of the City of ——— *for a Drain.*

To the Honorable ——— *Circuit Court:*

Your commissioner of drainage upon his oath makes the following report in the above matter, having completed said drain on the ——— day of ———, 18—.

Amounts of Moneys Received.

From Whom.	When Received. First Installment.	Amount.	When Received. Second Installment	Amount.	Total Received.
				General Total Received, $.	

Amounts of Money Paid.

To Whom.	No. Voucher.	Amount.	When Paid.	For What Paid.

Number of days devoted by me to the construction of said drain:

Day of Month.	Year.	No. Days.
Total number days,		

N. S.,
Drainage Commissioner.

I, N. S., upon my oath say that the above report is true and correct.
N. S.

State of Indiana, County of ——, *ss.*

Subscribed and sworn to before me, this —— day of ——, 18—.

[Notarial Seal.]

L. U.,
Notary Public.

SEC. 3221*hh*. Agreement to assessment. 9. After making said survey, plat and assessments, as hereinbefore required to be made, said city, by its common council, or a committee by it duly appointed, may submit said survey, plat and estimates of benefits and damages (or copies thereof) to the owners of lands affected thereby, and to the proper officer having charge of highways affected by said proposed inlet or outlet; and [if they] will accept said estimates of benefits and damages as therein assessed or agreed upon with said city, then and in such case, said city shall cause said survey, plat and assessments as agreed upon, together with the agreement of said parties, duly acknowledged, to be recorded in the office of the recorder of said county, and when so recorded [it] shall conclude the rights of the parties thereto, and become a lien upon the lands affected thereby for assessments made against said lands not exceeding the amount of said original assessments or as modified by the agreement of said parties. The recording of said survey, plat, estimates and agreements shall be deemed as an establishment of said inlet or outlet, and shall entitle said city to proceed and construct and maintain said inlet or outlet as a part of the city drainage; and shall entitle said city, by its duly qualified officers, to assess and collect assessments by it made in the construction of said inlet or outlet, as if made by

the commissioner of drainage as herein provided: *Providing further*, That under this provision said city shall keep said inlet or outlet in repair at its own expense, with a right of action against any person for damages who wantonly or carelessly fills or blocks the flow of the water in said inlet or outlet, and judgments rendered herein in any court shall be without relief, and include reasonable attorney's fees for the complaining party.

All the parties affected must sign the agreement; and if one of them declines to do so, the drain can not be established under this section.

Resolution Appointing Committees.

Resolved, that a committee of three of this council, to be selected by the mayor, be appointed to submit the survey, plat and estimates of benefits and damages, heretofore made, to the owners of lands affected by the proposed construction of a drain beginning near the intersection of Pine and Walnut streets of this city and extending westwardly to Dry creek, and also to submit the same to the trustee of ——— township.

Acceptance.

We, the owners of the property, a description of which is set out opposite our names, and which property has been assessed by the city of ———, State of Indiana, with amount of benefits or damages, as herein stated, that will be occasioned by the construction of the proposed drain running from near the intersection of Pine and Walnut streets of said city to Dry creek, a more particular description of which is contained in the report of the civil engineer of said city, filed on the ——— day of ———, 18—, and in the report of the committee made thereon to the mayor of said city on the ——— day of ———, 18—, hereby accept said estimates of benefits and damages as therein assessed and agreed upon with said city, as the full amount of damages or benefits respectively due us, viz.:

Name.	Description of Land.	No. Acres.	Amount Damages.	Amount Benefits.
L. X.	N. W. ¼ N. W. ¼ S. 11, T. 24 N., 4 E.	40		$126.00
X. L.	N. E. ¼ N. W. ¼ S. 11, T. 24 N., 4 E.	40	$22.00	
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....

In testimony whereof, we hereunto set our hands and seals at the county of ———, and State of Indiana, this ——— day of ———, 18—.

L. X., [Seal.]
X. L. [Seal.]

State of Indiana, County of ———, *ss.*

Personally appeared before me, N. J., a notary public in and for said county, the said L. X. and X. L., and acknowledged the execution of the foregoing instrument.

In testimony whereof, I have hereunto set my hand and notarial seal this ——— day of ———, 18—.

[Notarial Seal.]

N. J.,
Notary Public.

CHAPTER XXII.

CITIES AND TOWNS.

ART.
1. *General Provisions.*
2. *Annexation—Boundaries.*
3. *Taxation.*
4. *Water-works.*
5. *Cemeteries.*
5a. *Improved Streets.*
5b. *Parks.*

ARTICLE 1.—GENERAL PROVISIONS.

SEC.
3222. Qualifications for office.
3223. Qualifications of voters.
3224. Elections.
3224*a*. Donations legalized.
3224*b*. Traction or road engines on streets.
3224*c*. Engineer's duties—Whistling.
3224*d*. Misdemeanor.
3224*e*. Right of way for railroads through cities and towns.
3225. Prisons.
3225*a*. Assessment and collection of taxes in cities and towns of less than 70,000 population.
3226. Removal of garbage, etc.
3226*a*. Officer interested in public contract.
3226*b*. Removal of officer for intoxication.
3226*c*. Amount of liquor license.
3227. Security for arms.
3228. Distribution of arms.
3229. Planting shade-trees.
3229*a*. Injuring trees on highway.
3229*b*. Cutting shade-trees.
3229*c*. Electric and other lights in cities and towns.
3229*d*. Poles, wires, posts, etc.
3229*e*. Right to erect and maintain poles.
3229*f*. Contracts and grants valid.
3229*g*. Assesment of damages.
3229*h*. Natural gas regulations.
3229*i*. Contractor must satisfy records.
3230. Issuance of funding bonds.
3231. Sinking fund and interest.
3231*b*. Coupons received in payment of taxes.
3231*c*. Repeal.
3232. Notices.
3232*a*. Notices, where may be published.
3232*b*. License for pawnbrokers.

[1 R. S. 1852, p. 373. Approved and in force June 10, 1852.]

SEC. 3222. Qualifications for office. 1. No property qualification shall be necessary to render any citizen eligible to hold any office of any municipal incorporation in the State.

SEC. 3223. Qualifications of voters. 2. In all municipal elections under town or city charters in this State, no other qualifications shall hereafter be required of any voter than such as are made necessary under the constitution of the State, except that the voter shall reside in the ward or district where he may offer to vote.

See §§ 84 and 4680.

[1881 S., p. 482. Approved April 21, 1881, and in force September 19, 1881.]

SEC. 3224. Elections. 60. In city and town elections, each ward in which the number of voters does not exceed three hundred and fifty shall constitute a precinct: *Provided,* That the com-

mon council of any city or the trustees of any town shall make such changes in places of holding elections, or divisions in precincts, in their respective cities and towns, as will limit the number of voters in each precinct to three hundred and fifty as near as may be: *Provided*, That no such changes or divisions shall be made without giving due notice, at least one month before any election, either by publication in the newspaper having the largest circulation in the county in which such city or town is situated, or by posters put up in four of the most public places in such precinct. Such council or trustees shall appoint three qualified voters in each precinct, one to act as inspector and two as judges of elections, who shall have been freeholders and resident householders in such precinct for at least one year next preceding any election at which they may officiate; such inspectors and judges to be appointed according to such regulations as are hereinafter specified. Such inspector and judges, when so appointed, shall constitute a board of election; which board of election shall have all the powers and shall perform all the duties of boards of election, as herein before specified. [See §§ 4695 to 4720.]

With respect to the division of the city into precincts and holding elections, cities and towns are now governed by the election law of 1889, § 4710*m*. This section is in a part superseded. See §§ 4686, 4687.

[1889, p. 281. Approved and in force March 9, 1889.]

Sec. 3224*a*. Donations legalized. 1. All gifts, donations, sales, and transfers of money, stocks, bonds, and other property by any incorporated city or town in this State, made prior to January the 1st, 1885, to any manufacturing or other company duly incorporated under any law of this State, other than railroads which was then engaged in business in such city or town, or has since in good faith engaged in business therein, and has, since such gift, donation, sale, and transfer, acted in compliance with the terms on which the same was made, and the action of the various city councils, boards of trustees, and city and town officers in making and completing such gifts, donations, sales, and transfers, are hereby legalized and declared valid: *Provided*, That nothing in this act contained shall in any way affect any suits now pending in this State, but the same may be tried and determined as if this act had not been passed. [El. Sup. § 808.]

The validity of this act is very doubtful. See § 3152, *note* 6.

[1889, p. 428. Approved and in force March 11, 1889.]

Sec. 3224*b*. Traction or road engines on streets. 1. Any person or owner of a traction or road engine, shall, while using the said engine on any public highway, street, or alley of any incorporated town or city, send some person in advance of said engine, not less than fifty yards to warn all persons approaching, who are in charge of a horse, team or teams, of their proximity to such engine. [El. Sup. § 347.]

Sec. 3224*c*. Engineer's duties—Whistling. 2. And it shall be the duty of the engineer in charge of said engine or the owner thereof, upon the approach of said horse, team, or teams, to drive said engine to one side of the road or street when practicable, and to stop said engine until said horse, team, or teams, have passed said engine, and the whistle of said engine shall not be sounded while said horse, team, or teams are passing. [El. Sup. § 348.]

Sec. 3224*d*. Misdemeanor. 3. Any person or persons violating any provision of this act, shall be deemed to be guilty of a misde meanor, and upon conviction thereof, shall be fined in any sum not less than five dollars, and not exceeding fifty dollars. [El. Sup. § 349.]

[1865, p. 51. In force March 6, 1865.]

Sec. 3224*e*. Right-of-way for railroad through cities and towns. 1. The trustees of any town or the common council of any city may grant to any person, corporation, or company the right and privilege to locate and run a railroad track through said town or city, on the streets or alleys thereof, for the purpose of conveying coal into or through said town or city, under such restrictions and regulations as the trustees or common council may require. [R. S. 1881, § 4098.]

See § 3161*b*.

[1861 S., p. 21. Approved June 1, 1861, and in force September 7, 1861.]

Sec. 3225. Prisons. 1. Any incorporated town or city shall have power to erect a prison within the limits of such town or city; and it shall be lawful to imprison therein persons convicted of offenses against the laws of such incorporation, or for offenses against the penal laws of this State, and also, persons charged with offenses punishable by indictment or presentment, temporarily, until they can be conveniently removed to the county jail. So far as the same shall be applicable, the law governing county jails shall be the law of such town or city prison; and in all cases where the county jails are convenient, they may be used for town purposes until a town or city prison shall be erected.

With respect to a city prison, see § 3106, clause 44. Power of marshal to imprison, see § 3075, and *note*. Use of workhouse, § 6237.

[1885, p. 199. Approved and in force April 11, 1885.]

Sec. 3225*a*. Assessment and collection of taxes in cities and towns of less than 70,000 population. 1. The board of trustees of any incorporated town in this State, and the common council of any city in this State containing a population of less than seventy thousand, as shown by the last census of the United States, in which the office of city assessor has been previously abolished, may, by a provision contained in the ordinance or resolution fixing the tax levy for every year, provide that the taxes so levied shall be entered by the auditor of the proper county

upon his duplicate, and collected by the treasurer of such county as other taxes for the State and county purposes are collected, instead of being collected by the officers of such town or city. A certified copy of such ordinance or resolution shall be by the clerk of such town or city, filed with the auditor of the county on or before the first Monday in June of each year; and said auditor shall assess said taxes against all the property and polls within the corporate limits of such town or city subject to taxation and enter the same upon his tax duplicate; and the treasurer of such county shall collect such municipal taxes upon such duplicate as other taxes thereon are collected, and pay the same over when collected to the proper officer of such town or city. When town or city taxes are collected by county officers under this act, the same may be paid in installments on the third Monday in April and on the first Monday in November in like manner as similar taxes for state, county, and township purposes are payable, and shall become delinquent in like manner and subject to the same penalties upon non-payment as other taxes. And all of the provisions of the law concerning the collection of state, county, and township taxes by county officers, shall apply to the collection of town and city taxes by county officers under the provisions of this act. [El. Sup. § 810.]

1. The tax should be extended upon the county tax duplicate in a separate column for that purpose. A separate tax duplicate, perhaps, can not be used, and if used, extra pay therefor can not be demanded by the county auditor. When payment in installments in cities may be made, see § 3160*a*.

2. The following resolutions should be a part of the ordinance levying the tax; it can not be separate and apart from it.

Resolution.

The taxes hereby levied shall be entered by the auditor of ——— county upon his duplicate, and shall be collected by the treasurer of said county as other taxes for state and county purposes are collected; and the clerk of the city [*or*, town] is hereby ordered to certify to a copy of this ordinance and file the same with said auditor on or before the first Monday in June of the present year.

[1875, p. 28. Approved and in force March 9, 1875.]

Sec. 3226. Removal of garbage, etc. 1. The common councils of the cities and the trustees of the incorporated towns of this State are empowered and authorized to pass by-laws to secure the removal of slops, garbage, the carcasses of dead animals, and other waste material from their corporate limits, and to appoint and contract for such removal, and provide that the persons appointed, or contracted with, shall have the exclusive right to remove the same, and to provide such penalties for the violation of by-laws, in accordance with the general laws for the incorporation of cities and towns, now in force, or which may hereafter be adopted.

See § 3106, clause 22, *note*.

[1881 S., p. 174. Approved April 14, 1881, and in force September 19, 1881.]

SEC. 3226*a*. Officer interested in public contracts. 144. Any state officer, county commissioner, township or town trustee, mayor or a common councilman of any city, school trustee of any town or city, or their appointees or agents, or any person holding any appointing power, or any person holding a lucrative office under the constitution or laws of this State, who shall, during the time he may occupy such office or hold such appointing power and discharge the duties thereof, be interested, directly or indirectly, in any contract for the construction of any state-house, court-house, school-house, bridge, public building, or work of any kind erected or built for the use of the State, or any county, township, town, or city in the State, in which he exercises any official jurisdiction; or who shall bargain for or receive any percentage, drawback, premium, or profits, or money whatever, on any contract or for the letting of any contract or making any appointment wherein the State, or any county, township, town, or city is concerned,—upon conviction thereof, shall be fined not more than five thousand dollars nor less than three hundred dollars, and imprisoned in the state-prison not more than fourteen years nor less than two years, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2049.]

A town trustee may not contract with the board to build a town building. His contract is void, 91 Ind. 476; nor a town treasurer to grade a street, 110 Ind. 294. Such a contract is void. 45 Ind. 250; 59 Ind. 520. See 77 Ind. 307, and § 3104, *note*.

[1875, p. 91. Approved March 11, 1875, and in force August 24, 1875.]

SEC. 3226*b*. Removal of officer for intoxication. 1. Any person holding any office under the constitution or laws of this State, who shall voluntarily become intoxicated within the business hours of his office, or shall be in the habit of becoming intoxicated by the use of intoxicating liquors, shall forfeit his office and be removed therefrom, upon complaint, filed in the circuit court of the county in which he resides, by any citizen of this State, alleging that he is a citizen of the State of Indiana, and giving the name of the person complained of, designating the office which he holds, and that such officer has voluntarily become intoxicated within the business hours of his office, or is in the habit of becoming intoxicated by the use of intoxicating liquors during his continuance in office. The clerk of said court shall docket said cause for trial, and issue summons for the defendant as in other causes. If, upon the trial of said complaint, either by the court or a jury, it shall be found that the facts stated in the complaint are true, such officer shall be adjudged to have forfeited his office, and the office be adjudged vacant. [R. S. 1881, § 6012.]

This section is constitutional, 81 Ind. 327.

[1889, p. 395. Approved March 11, 1889, and in force May 10, 1889.]

Sec. 3226*c*. Amount of liquor license. 2. No city or incorporated town shall charge any person who may obtain a license under the provisions of this act, more than the following sums for license to sell within their corporate limits: Cities may charge two hundred and fifty dollars, and incorporated towns one hundred and fifty dollars in addition to the sum provided for hereinbefore. [El. Sup. § 1684.]

The above section is an amendment of Section 5317 of the Revised Statutes of 1881; and forms a part of the statute concerning the licensing of intoxicating liquors. It is constitutional, even as to those persons having a license when it went into force, 120 Ind. 476. See § 3106, clause 13, *notes*, and § 3333, clause 7, *notes*.

[1861 S., p. 20. Approved and in force May 10, 1861.]

Sec. 3227. Security for arms. 1. Whenever the mayor and common council of any incorporated city or the trustees of any town in the State of Indiana shall obtain from the state authorities arms of any kind, to be used by the military organizations of such cities or towns; or whenever any volunteer military organization shall obtain arms from the State,—it shall be lawful for the mayor and common council of such city or the trustees of such town to cause to be executed and delivered to the governor of the State of Indiana, a bond, conditioned, according to law, for the safety and delivery of such arms in the manner as now by law provided; and said bond shall have the same force and effect as a bond with personal security is now held.

Sec. 3228. Distribution of arms. 2. The governor may, in his discretion, distribute public arms, as herein provided, to any incorporated town or city, notwithstanding any other law in conflict herewith.

Resolution Ordering Bond.

Whereas, the Indianapolis Light Guards, a voluntary military organization of this city, has obtained from the State of Indiana, one hundred Henry rifles for the use of the members thereof, therefore

Resolved, by this council, that the mayor of this city be and is hereby ordered, directed and impowered to execute and deliver to the State of Indiana, the bond of this city in the penal sum of ——— dollars, for the safe keeping and delivery of said rifles to said State, whenever demand is made therefor by the legally constituted state authorities.

Bond.

Whereas, the common council of the city of ———, State of Indiana, by a resolution adopted on the ——— day of ———, 18—, directed the mayor thereof to execute a bond payable to the State of Indiana, in the penal sum of ——— dollars, conditioned for the safe keeping and delivery to said State of one hundred Henry rifles, obtained by the Indianapolis Light Guards, a voluntary military organization of said city, from said State, whenever delivery thereof be demanded by the legally constituted state officers; therefore,

The city of ——— acknowledges itself bound unto the State of Indiana in the penal sum of ——— dollars. Witness the hand of the mayor and the seal of said city this ——— day of ———, 18—.

The condition of the above bond is, that if said guards shall safely keep and deliver up said rifles in the same condition they were when received (wear and ordinary tear excepted), to the legally constituted authorities of said State upon demand, then this bond shall be void; else in full force and effect.

Attest: The City of ———,

[Corporate Seal.] C. D., By A. B., Mayor.

Clerk of the City of ———.

[1865 S., p. 104. Approved and in force December 20, 1865.]

Sec. 3229. Planting shade-trees. 1. The incorporated cities and incorporated towns of this State are hereby invested with full power to compel the owners of lots and parts of lots bordering on any street, alley, public square, or common of said cities and towns, to plant and maintain shade-trees along said streets, alleys, public square, or common, under the same regulations and in the same manner in which the grading and paving of streets and sidewalks are now enforced. When such owners shall petition the common council for the planting and maintaining of any particular kind of tree, said council shall, in making their order for the same, designate the kind of tree named in said petition; but when the kind of tree shall not be designated in said petition, or where shade-trees are required to be planted and maintained on order of the council without petition, then the council, in making the proper order, shall designate therein the kind of tree to be planted and maintained. The common council are hereby invested with full power to pass by-laws and ordinances for the protection and preservation of trees established in pursuance of this act, and to designate the distances at which shade-trees shall be established, and the kind of boxing or other protection for the same, the cost of which shall be assessed and collected in the same manner in which the cost of establishing and maintaining shade-trees is assessed and collected.

See § 3106, clause 46, *notes*.

AN ORDINANCE TO PROVIDE FOR PLANTING SHADE-TREES ON ——— STREET.

Sec. 1. *Be it ordained by the Common Council of the City of* ———, That shade-trees of soft maple be set on the outside edge of each sidewalk on ——— street, not less than two inches in size at the butt, and ten feet in length, and properly boxed with slat boxes, and that the expense of planting and boxing said trees as aforesaid, (except so much thereof as is occupied by the public grounds owned by said city bordering thereon, and for crossings of streets and alleys,) be assessed against and collected from the owners of the lots bordering on said street, between the limits aforesaid.

Sec. 2. The civil engineer is hereby directed to set the proper grade stakes, and to advertise, by publication, one day each week for two successive weeks, in the ———, and by posting up printed notices in not less than five of the most public places in the city, that sealed proposals will be received by the common council at its meeting, to be held on the ——— day of ———, 18—, for the execution of said work.

Sec. 3. This ordinance shall take effect and be in force from and after its passage.

[1881 S., p. 174. Approved April 14, 1881, and in force September 19, 1881.]

3229*a*. Injuring trees on highway. 62. Whoever shall willfully, maliciously, or mischievously, and without right, cut down, or in any way injure, any tree on the public highway shall be fined not more than five hundred dollars nor less than five dollars. [R. S. 1881, § 1963.]

Charge.

The State of Indiana, County of ———, *ss.*

The State of Indiana vs. A. B. Before X. L., a justice of the peace of ——— *township:*

C. D., upon his oath, says that at the county of ———, and State of Indiana, on the ——— day of ———, 18—, A. B. did then and there unlawfully, willfully, maliciously, mischievously, and without right, cut down a certain tree then and there growing on Vernon street, a public highway within the corporate limits of the town of ———, within said county, running from the corporate limits of said town to East street thereof, contrary to the form of the statute in such cases made and provided.

C. D.

Subscribed and sworn to before me this ——— day of ———, 18—.

X. L.,
Justice of the Peace.

Sec. 3229*b*. Cutting shade-trees. 64. Whoever removes, destroys, cuts, or girdles any shade-tree, or carries off or removes or in anywise injures the protecting box of any shade-tree, in any city, town, or village of this State, shall be fined in any sum not more than fifty dollars nor less than three dollars; but this section shall not be so construed as to prevent any owner of grounds from making any necessary alterations in the walks or trees on the same. [R. S. 1881, § 1965.]

Charge.

[*Begin as in charge on* § 3229*a*.] Did then and there unlawfully cut down a certain shade-tree then and there growing on the lands of E. F. within the corporate limits of the city [*or*, town] of ———, within said county, contrary, etc. [*end as in charge on* § 3229*a*.]

[1883, p. 85. Approved and in force March 3, 1883.]

Sec. 3229*c*. Electric and other lights in cities and towns. 1. The common council of any city in this State, incorporated either under the general act for the incorporation of cities, or under a special charter, and the board of trustees of all incorporated towns of this State, shall have the power to light the streets, alleys, and other public places of such city and town with the electric light, or other form of light, and to contract with any individual or corporation for lighting such streets, alleys, and other public places with the electric light, or other forms of light, on such terms, and for such times, not exceeding ten years, as may be agreed upon. [El. Sup. § 794.]

Sec. 3229*d*. Poles, wires, posts, etc. 2. For the purpose of effecting such lighting, the common council of any such city, or the board of trustees of any such town, may provide by resolution or ordinance for the erection and maintenance, in the streets, alleys, or other public places of said city or town, of such poles, wires, posts, masts, skeleton towers, and other appliances or structures as may be necessary for such purpose. [El. Sup. § 795.]

Sec. 3229*e*. Right to erect and maintain poles, etc. 3. Any such incorporated city or town is hereby authorized to grant by resolution or ordinance, under such restrictions as the common council of such city, or board of trustees of such town, may deem proper, to any person or corporation, the right to erect and maintain, in the streets, alleys, and other public places of such city or town, posts, poles, wires, and other necessary appliances, underground in said streets, alleys, and other public places, for the purpose of supplying the inhabitants of such city or town with such electric or other light. [El. Sup. § 796.]

Sec. 3229*f*. Contracts and grants valid. 4. Any contract heretofore made by any such incorporated city or town for the lighting of its streets, alleys, and other public places, with the electric or other form of light, and any grant heretofore made by any such city or town to any person or corporation of the right to erect and maintain poles, wires, masts, posts, or skeleton towers in the streets or other public places of said city or town, for the purposes specified in this act, which does not grant or confer any exclusive privileges, is hereby declared to be as valid for all purposes as if made after the taking effect of this act: *Provided*, That the terms of this section shall affect no pending suit. [El. Sup. § 797.]

Sec. 3229*g*. Assessment of damages. 5. Any corporation engaged in the business of lighting cities or towns, or the public or private places of their inhabitants, with the electric light, or other form of light, under the provisions of this act, shall have the right to acquire such real estate and rights of way as may be necessary for its business under the writ of assessment of damages as fully as if the act in relation to said writ were incorporated in this act and made part of the same: *Provided*, That in the assessment of damages, consideration shall be had for damages occasioned by the proximity of such poles, wires, masts, posts, or skeleton towers to real estate or improvements thereon, as well as to damages arising from the appropriation of real estate for the purposes in this act set forth. [El. Sup. § 798.]

1. This statute is constitutional; and under it a city or town may either contract for light or buy and operate the necessary machinery and plant. In payment of such plant and machinery it may issue bonds, under the general principle that a municipal corporation with authority to purchase property may issue its bonds in payment, unless there is some statutory or constitutional prohibition, 121 Ind. 206.

2. A city or town can not, however, put in a plant to supply private consumers with light, and if it attempts to do so, it may be enjoined; nor can it use a plant put in for public lighting to supply private consumers.

3. Where a pedestrian, carefully passing along a side-walk in the day-time, falls over an electric light wire negligently permitted by the company to lie thereon, he is not, as a matter of law, guilty of contributory negligence in failing to observe the obstruction, and the company is liable, 126 Ind. 220.

[1887, p. 36. Approved and in force March 7, 1887.]

Sec. 3229*h*. Natural gas regulations. 1. The boards of trustees of towns and the common councils of cities in this State, shall have power to provide by ordinance, reasonable regulations for the safe supply, distribution and consumption of natural gas within the respective limits of such towns and cities; and to require persons or companies to whom the privilege of using the streets and alleys of such towns and cities is granted for the supply and distribution of such gas to pay a reasonable license for such franchise and privilege. [El. Sup. § 800.]

1. See §§ 3110, 3110*a*, and 3110*b*.

2. This act does not authorize a city or town to grant an exclusive privilege to lay gas-pipes in the streets. It requires a general ordinance, granting to all companies the same privileges on complying with the terms of the ordinance. A grant to one company of an exclusive privilege does not authorize another company to use the streets, on the plea that such grant is void, 114 Ind. 332.

3. The law prohibiting the conveying of natural gas beyond the limits of the State is void, 120 Ind. 575; S. C. 30 Cent. L. Jr. 179. See 30 Cent. L. Jr. 497; and 29 Amer. L. Reg. 93, 102, on questions relating to natural gas. The validity of the act of 1891 (Acts 1891, p. 89) has not been passed upon by the courts.

[1885, p. 73. Approved March 7, 1885, and in force June 5, 1885.]

Sec. 3229*i*. Contractors must satisfy records. 1. The common councils of the cities of this State and boards of trustees of incorporated towns of this State shall have power to pass and enforce ordinances requiring contractors making street or other improvements in such cities, [or towns] to receipt and fully satisfy the estimate records and other books showing a lien against any one's property in favor of such contractor, within thirty days from the time of the payment of such estimate to said contractor, and to impose penalties for violation of such ordinances. [El. Sup. § 823.]

[1887, p. 15. Approved and in force February 15, 1887.]

Sec. 3230. Issuance of funding bonds. 1. Any city or town in this State, having a voting population of less than sixteen thousand, as shown by the votes cast for secretary of state at the last preceding election, and having an indebtedness evidenced by bonds, notes, or other obligations heretofore issued or negotiated by such city or town, may, for the purpose of funding such indebtedness, or any part thereof, and reducing the rate of interest thereon, and canceling so much thereof as may be due or shall hereafter become due, upon the vote of two-thirds of the members of the common council of such city or the board of trustees of

such town, issue its bonds, with interest-coupons attached, for an amount not exceeding, in the aggregate, the whole amount of the indebtedness of such city or town; which bonds may be of any denomination not less than fifty dollars nor more than one thousand dollars, and shall be payable at any place named therein, and at a time not later than twenty-five years from the date thereof, and shall bear any rate of interest not exceeding six per cent. per annum, payable semi-annually; and such city or town may negotiate such bonds at any market or place at not less than par. [El. Sup. § 803.]

Sec. 3231. Sinking fund and interest. 2. The common council of such city or the board of trustees of such town shall add to the tax duplicate thereof, annually, a levy sufficient to pay the yearly interest on said bonds and may provide a sinking fund for the liquidation of the principal thereof, when it shall become due; when sinking fund, together with all interest, increase, or profit thereon, shall be applied to the payment of said bonds and to no other purpose: *Provided*, This act shall not authorize the issuance of bonds for the purpose of funding, nor the levy of any tax to pay any indebtedness of a city or town which has been held to be illegal by any court of competent jurisdiction; nor shall this act be construed to have the effect of legalizing any illegal debt of or any bonds illegally issued by any city or town. [El. Sup. § 804.]

Sec. 3231*a*. Coupons received in payment of taxes. 3. The interest coupons attached to any bonds issued by authority of this act may, by order of the common council or board of trustees, when due, be made receivable for taxes levied or assessed in any such city or town, or other municipal corporation for the payment of such interest; and when so ordered and so expressed upon the face of the coupons, they shall be receivable in payment for any taxes thereafter levied or assessed in the city, town or other municipal corporation issuing the same, for the payment of said interest. [El. Sup. § 805.]

Sec. 3231*b*. Repeal. All laws and parts of laws in conflict with the provisions of this act are hereby repealed. [El. Sup. § 806.]

See §§ 3120 and 3125, *note* 2. Temporary investment of funds, § 3158*a*. The only effect which the adoption of the constitutional amendment (§ 220), with respect to municipal indebtedness had upon these four sections was to limit their application to debts contracted prior to March 14, 1881, and to such as have been since incurred, not in excess of the two per centum limit upon the value of taxable property of the municipality, 107 Ind. 106.

[1855, p. 130. Approved March 3, 1855, and in force August 17, 1855.]

Sec. 3232. Notices. 5. All notices now required by law to be given by the trustees of any incorporated town or city, may hereafter be given by written notices, to be posted up in three of the most public places within such incorporated town or city.

See §§ 3100*a*, and 3100*g*, and § 3232*a*.

[1891, p. 72. Approved and in force March 4, 1891.]

SEC. 3232*a*. Notices, where may be published. 1. In all cases where it is now or may hereafter be provided by law that publication shall be made in a newspaper or newspapers of general circulation, published within a city or incorporated town, and where no newspaper or newspapers are published in such city or incorporated town, it shall be lawful to make such publication in any newspaper or newspapers published in the county where such city or incorporated town is located.

See §§ 3232, 3100, 3100*a*, 3100*b*, and 3100*c*.

[1891, p. 403. Approved and in force March 9, 1891.]

SEC. 3232*b*. License for pawnbrokers. 1. Common councils of cities and boards of trustees of incorporated towns, incorporated under the laws of Indiana, shall have the power to license and regulate the business of pawnbroking within the corporate limits of their respective cities or towns, and impose upon persons engaging in such business a license fee of not less than ten nor more than one hundred dollars.

Formerly the license could not be exacted, but an exhibition of all goods pawned, to the police force for examination could and can be now required. 26 N. E. Rep. 560.

ARTICLE 2—ANNEXATION—BOUNDARIES.

SEC.		SEC.	
3233.	Union of cities and towns.	3244.	Auditor's duty.
3234.	Terms and conditions.	3245.	Trial.
3235.	Agreement made public.	3246.	Effect of appeal.
3236.	Election.	3247.	Disannexing territory.
3237.	Tickets.	3248.	Disannexing territory.
3238.	Report of election—Annexation.	3249.	Survey and plat.
3239.	Name.	3250.	Survey and plat.
3240.	Name.	3251.	To be kept by city clerk.
3241.	Effect of union.	3252.	Law applies to towns.
3242.	Property and debts.	3253.	Legalized plats.
3243.	Appeal from county board.	3253*a*.	Ground platted within a city or town.

[1857, p. 22. Approved and in force February 16, 1857.]

SEC. 3233. Union of cities and towns. 1. Where an incorporated town and an incorporated city adjoin each other, they may be consolidated or united, or the town annexed to the city, provided a majority of the qualified voters of the town and a majority of the qualified voters of the city shall vote in favor thereof, at elections to be held as hereinafter provided.

SEC. 3234. Terms and conditions. 2. The common council of the city and the president and trustees of the town shall first agree on the terms and conditions upon which such union, consolidation, or annexation shall take place, and also upon a day when an election shall be held for the people of such town and city to vote upon the question of union, consolidation, or annexation, upon the terms specified in such agreement.

Resolution of City Inviting Negotiation.

Resolved, by the common council of the city of ———, State of Indiana, that the president and trustees of the town of ——— be and are hereby requested to meet this council in this chamber at 7:30 p. m. on the ——— day of ———, 18—, for the purpose of entering into an agreement to unite and consolidate this city and said town [*or*, to annex said town to this city.] The clerk of this city is ordered to file with the clerk of said town a certified copy of this resolution; and said town clerk is hereby requested to lay the same before the board of trustees of said town.

Resolution of Acceptance.

Resolved, that the invitation of the common council of the city of ———, adopted on the ——— day of ——— 18—, inviting the president and trustees of this town to meet it at 7:30 p. m. on the ——— day of ———, 18—, in the council chamber of said city, for the purpose of entering into an agreement to unite and consolidate said city and this town [*or*, to annex this town to said city,] be and the same is hereby accepted. The clerk of this town is ordered to file with the clerk of said city a certified copy of this resolution; and such city clerk is hereby requested to lay the same before the common council of said city.

Agreement for Union of City and Town.

The city of ———, of the State of Indiana, by its common council, and the town of ———, of the State of Indiana, by its board of trustees, with a view of uniting and consolidating in joint assembly, pursuant to the resolution of invitation of said city, adopted on the ——— day of ——— 18—, and pursuant to the resolution of acceptance of said town, adopted on the ——— day of ——— 18—, hereby mutually agree, each with the other, that said city and town shall be united and consolidated upon the following terms, to wit:

1. The name of said newly created city shall be the city of Arno.

2. The members of the common council of said city of ——— shall consist of the present members of the common council of the city of ———, and the present members of the board of trustees of the town of ———, who shall serve out the terms for which they are respectively elected, as representatives of the wards from which they were respectively elected; and each shall have an equal membership in the common council of said city of Arno until his successor is elected and qualified.

3. Whenever such union or consolidation shall take effect, all the offices of said town, except the offices of trustees of the civil town, shall be abolished without further act upon the part of said town or said newly created city of Arno, and each officer of said town shall immediately turn over to his like representative of the present city of ——— all books, documents, records, property, moneys, credits, and everything belonging to said town in his possession, and such like officers of the city of ——— shall have the right to demand and receive such property, moneys, credits, and to settle with such town officer and give him a receipt therefor.

4. The present officers of the city of ——— shall continue in office and constitute the officers of said newly created city of Arno, for the length of time for which they were elected, and until their successors are elected and qualified.

5. An election shall be held in said city of ———, and town of ———, on the ——— day of ——— 18—, for the purpose of determining whether said city and town shall be united and consolidated.

6. If the vote be in favor of the consolidation and union, then said board of trustees shall meet said common council in the council chamber of said city on the ——— day of ———, 18—, at 7:30 p. m., for the purpose of completing said union and consolidation.

Witness the hands of the mayor, and members of the common council,

of said city of ———, and its corporate seal; and the hands of the president and trustees of said town of ———, and its corporate seal, at the council chamber of said city, this ——— day of ———, 18—.

A. B.,
Mayor of the City of———.
C. D.,
E. F., etc.
Members of the Common Council of the City of ———.

Attest:
[Corporate Seal.] L. X.,
Clerk of the City of ———

U. T.,
President.
R. S., etc.
Members of the Board of Trustees of the Town of ———.

Attest:
[Corporate Seal.] X. L.
Clerk of the Town of ———.

Sec. 3235. Agreement made public. 3. Such agreement shall be made public at least three weeks before the time agreed upon for such election, by publishing the same at least three times in each newspaper printed and published in the county where such town and city are situated, and by posting printed hand-bills, containing said agreement, in three of the most public places in each ward of such town and city.

Notice.

Notice is hereby given to the inhabitants of the city of ———, State of Indiana, [*or*, town of ———, State of Indiana,] that pursuant to an invitation of the common council of said city, the board of trustees of the town of ———, State of Indiana, met said council in the council chamber of said city, on the ——— day of ———, 18—, and they mutually entered into the following agreement for the union and consolidation of said city and town, viz.:

[*Insert agreement in full.*]

Notice is therefore given that an election will be held in said city [*or*, town] at the usual voting places therein, between the hours of 6 [*or*, 8] a. m. and 6 p. m., on the ——— day of ———, 18—, for the purpose of determining whether said city and town shall be united and consolidated.

L. X.,
Clerk of the City of ———.
[*or*, X. L.,
Clerk of the Town of ———.]

Sec. 3236. Election. 4. The election above provided for shall be held at the time agreed on, as above provided, and at the places where other city and town elections are usually held in such city and town respectively, and be governed by the laws and regulations governing other city and town elections in such city and town respectively.

So far as applicable, the election law of 1889 must be followed.

Sec. 3237. Tickets. 5. Those who vote in favor of union or annexation according to the agreement aforesaid shall have on their tickets the word "Union," and those who vote against it shall have on their tickets the words "No union," or equivalent words.

Sec. 3238. Report of election—Annexation. 6. The inspectors and judges of the election shall report to the common council and president and trustees, respectively, the result of such election. And the report of the inspectors and judges of the town election shall be entered on the records of the president and trustees, and a certified copy thereof delivered to the clerk of the city; and the report of the inspectors and judges of the city election shall be entered on the records of the common council, and a certified copy thereof delivered to the clerk of the town. And if a majority of the votes given in the town as well as a majority of the votes given in the city are in favor of union or annexation, then the president and trustees and the common council shall meet at the council chamber of the city council, and, by resolution, declare that the town is annexed to the city or the two united, as the case may be, according to the agreement aforesaid. And such resolution shall be entered on the records of the city council, and such record, and certified copies thereof, shall be conclusive evidence of such union or annexation, and a copy of such resolution shall also be recorded in the recorder's office of the county where such city is situated, and copies of such record shall be good evidence in all courts.

Each precinct reports directly to the common council or board of trustees; and each body for itself then ascertains the result by adding up the totals.

Report of Election Board.

To the Common Council [or, *Board of Trustees*] *of the City* [or, *Town*] *of* ———:

The undersigned, inspectors and judges of precinct number ———, of said city [*or*, town], at an election held between the hours of 6 [*or*, 8] a. m. and 6 p. m., on the ——— day of ———, 18—, in said city [*or*, town], for the purpose of determining whether said city [*or*, town] should be united and consolidated with said the town [*or*, city] of ———, pursuant to the agreement of the common council of said city and the trustees of said town, entered into on the ——— day of ———, 18—, report as follows, viz.:

Those voting in favor of said consolidation were . . . . . ———
Those voting against said consolidation were . . . . . ———
Majority in favor of said consolidation . . . . . ———

A. B.,
Inspector.
C. D.,
E. F.,
Judges.

Clerk's Certificate of Election Returns.

I, A. B., clerk of the city [*or*, town] of ———, hereby certify that the following are full, true and complete copies of the reports entered of record in the records of the common council [*or*, board of trustees] of said city [*or*, town] on the ——— day of ———, 18—, made by the inspectors and judges of election held in said city [*or*, town] on the ——— day of ———, 18—, for the purpose of determining whether said city [*or*, town] should be united and consolidated with the town [*or*, city] of ———, both of the State of Indiana.

[*Set out copies of all certificates.*]

In testimony whereof, I have hereunto set my hand and the seal of said city [*or*, town], this ——— day of ———, 18—.

[Seal.]

B. X.,
Clerk of the City [*or*, Town] of ———.

Resolution of Consolidation.

Whereas, on the ——— day of ———, 18—, the common council of the city of ———, and the trustees of the town of ———, both of the State of Indiana, by mutual arrangement met in the council chamber of said city, and entered into an agreement for the consolidation and union of said city and town, to be known as the city of ———; and

Whereas, said agreement was published for three weeks before the day of election hereinafter mentioned, by publication in the ——— weekly journal; and

Whereas, at an election held respectively in said city and town, for the purpose of determining whether they should be united and consolidated, on the ——— day of ———, 18—, after due notice had been duly given, there was, in said city, in favor of the union and consolidation ——— votes cast, and only ——— votes against the proposed union and consolidation, and there was, in said town, in favor of the union and consolidation ——— votes cast, and only ——— votes against the proposed consolidation and union, as appears from the certificates of the inspectors and judges of elections in said city and town; and

Whereas, it thus appears that there was a majority of the votes cast in said city in favor of said proposed union and consolidation; and a majority of the votes cast in said town were in favor of said consolidation and union; therefore,

It is jointly ordained and resolved by the common council of said city, and by the board of trustees of said town, that said city of ——— and said town be and the same are hereby united and consolidated, and it is so declared, under and by the name of the city of Arno, by which name the territories of said city of ——— and of said town of ——— shall hereafter be known, upon the following terms, as agreed upon in said agreement, of the ——— day of ———, 18—, viz.:

[*Set out the second, third and fourth clauses of the agreement.*]

The clerk of this city is hereby ordered to file a certified copy of this resolution in the recorder's office of the county of ———.

Sec. 3239. Name. 7. If the agreement aforesaid should be to annex the town to the city, and the election and resolution aforesaid shall be in favor thereof, then the town shall be deemed a part of the city to all intents and purposes, and the city shall continue its corporate name and existence.

Sec. 3240. Name. 8. If the agreement aforesaid be to unite or consolidate, then the agreement aforesaid shall contain also a stipulation as to the name of the consolidated or united town and city.

Sec. 2241. Effect of union. 9. When a town and city shall be consolidated or united as aforesaid, they shall constitute one city, by the corporate name agreed on as aforesaid.

Sec. 3242. Property and debts. 10. In case of annexation as aforesaid, the city shall be liable for all debts, contracts, and liabilities of the town, and shall be entitled to all the rights, credits, moneys, effects, and property of the town; and may sue and be sued in relation thereto in the name of the city. And in case of a union or consolidation, the new city shall be liable for all debts, contracts, and liabilities of the town and city consolidated, and be entitled to all the rights, credits, moneys, effects, and property of the town and city consolidated or united, and may sue and be sued in relation thereto in the name agreed on and adopted for the con-

solidated city as aforesaid. And in case of either annexation or consolidation, all actions pending may be prosecuted to final judgment and execution, and all judgments heretofore rendered may be executed and enforced without any change of the parties and without any change of the name of plaintiff or defendant.

[1879 S., p. 94. Approved March 28, 1879, and in force May 31, 1879.]

Sec. 3243. Appeal from county board. 1. In proceedings before the board of county commissioners for the annexation of territory to cities and towns against the will of the owner, the petitioner and the owner of any portion of the territory proposed to be annexed may appeal to the circuit court from the final decision of the board, by filing, within thirty days, with the auditor, a bond or undertaking for the due prosecution of the appeal and payment of all costs that may be adjudged against the appellant, with sureties, to be approved by the board or the auditor. But no appeal shall be dismissed for want of a sufficient bond or undertaking, if one shall be filed, under the direction of the court, at any time before the trial.

Sec. 3244. Auditor's duty. 2. Within twenty days after filing the appeal bond or undertaking, the auditor shall deliver it, with all the other papers in the cause and a complete transcript of the proceedings of the board, to the clerk of the circuit court, who shall docket it with the other causes pending therein.

Sec. 3245. Trial. 3. The appeal shall stand for trial, when taken during the session of the board, at the first term after the papers shall have been filed ten days, and, when taken in vacation, at the first term after summons shall have been served upon the appellee ten days before the first day of such term. The appeal shall be tried and determined as an original cause.

Sec. 3246. Effect of appeal. 4. All further proceedings in the annexation of territory shall be suspended until the final disposition of the appeal. The court may make a final determination of the proceeding and compel its execution, or may send its decision to the board, with direction how to proceed, and require compliance.

[1881 S., p. 91. Approved April 13, 1881, and in force September 19, 1881.]

Sec. 3247. Disannexing territory. 1. Cities and towns of this State desiring to disannex territory, or to reduce their city or town limits, shall have power to do so in the manner following: The common council of cities and boards of trustees of towns desiring the relief under this act shall cause a petition to be filed with the board of commissioners of the county in which such city or town is situated, reciting the fact of the desire of such city or town to disannex certain territory and surrender jurisdiction over and control of the same, particularly describing the same and, in such petition,

formally surrendering all claims to control of and jurisdiction over such land. Notice of the filing of such petition and the substance thereof shall be published, for three weeks successively, in some newspaper printed and published in such county, previous to the first day of the meeting of such board of commissioners. If the facts in such petition be found to be true, said board shall cause an order to be made upon their record, declaring such property disannexed from such town or city from the date of such order, and that the same shall be relieved from the control of such city or town, and no longer be subject to such jurisdiction; which said order, when so made, shall be published for three weeks successively in some weekly newspaper printed and published in said county: *Provided,* That nothing herein contained shall release the territory so disannexed and surrendered from any taxes or other liens existing against such city or town at the time of, or prior to the order of such county board disannexing such territory.

Resolution.

Resolved, that the following petition be presented to the board of commissioners of the county of ———, viz.:

To the Board of Commissioners of the County of ——— :

The common council of the city of ———, State of Indiana, state that said city desires to disannex the following described territory and surrender its jurisdiction over and control of the same, viz.: [*Describe it particularly,*] and said city does hereby surrender all its claims to control of and jurisdiction over said described land.

The City of ———,
By A. B., Mayor.

[A certified copy of this resolution and petition should be laid before the board of commissioners.]

Notice.

To Whom it May Concern:

Notice is hereby given that on the ——— day of ———, 18—, the common council of the city of ———, filed a petition with the board of commissioners of the county of ———, expressing a desire to disannex and surrender jurisdiction and control over the following territory, to wit: [*Describe it*], and formally surrendering all claims to control of and jurisdiction over such land.

A. B.,
Clerk of the City of ———.

Commissioners' Record.

Whereas, on the ——— day of ———, 18—, the city of ———, State of Indiana, filed the following petition before this board, viz.: [*Set it out*], and

Whereas, notice of the facts of said petition, and the substance thereof, was published for three weeks successively in the ——— *Weekly Argus*, a newspaper printed and published in this county, previous to the first day of this present term; and

Whereas, this board finds the facts recited in said petition to be true; therefore

It is ordered and decreed that such property, viz.: [*Describe it*], be and is hereby disannexed from said city from this date, and the same is hereby relieved from the control of said city, and is no longer subject to its jurisdiction.

[This order should be published in full.]

[1877, p. 22. Approved March 3, 1877, and in force July 2, 1877.]

SEC. 3248. Disannexing territory 1. The common council of any city or the board of trustees of any incorporated town of this State is hereby authorized and empowered, at any regular meeting of the same, on the application of any owner of any suburban lot or tract of land not laid out in lots, by a two-thirds vote of such common council or board of trustees, so to modify the boundaries of such city or incorporated town, as to exclude therefrom such lots or tracts of land, upon such terms as such common council or board of trustees may impose.

Petition.

To the Common Council of the City of ——— :

The undersigned, owner of the following unplatted and suburban tract of land within said city, respectfully prays that the corporate limits of said city be so changed and modified as to exclude said tract from the limit and jurisdiction of said city, to wit: [*Describe the land.*]

A. B.

Resolution.

Whereas, A. B., the owner of the following unplatted and suburban tract of land within this city, to wit: [*Describe the land*] has presented a petition to this council praying that the boundaries of the city be so modified as to exclude said tract of land from the corporate limits of this city; therefore, it is hereby ordered and ordained by this council that corporate limits of the city be modified as follows, to wit: [*Describe the modification*], and that the jurisdiction of the city over said tract be released upon the following terms, viz.: [*State the terms.*]

Acceptance of Terms of Release.

To the Common Council of the City of ——— :

I, A. B., hereby accept the terms your honorable body imposed upon me by your resolution of the ——— day of ———, 18—, for the release of the following tract of land, owned by me, from the jurisdiction of said city, viz.: [*Describe the land.*]

A. B.

[1872 S., p. 14. Took effect without executive approval December 27, 1872.]

SEC. 3249. Survey and plat. 1. Any city incorporated under the authority of this State that has no sufficient survey and plat thereof may, by a resolution of the common council thereof, adopted by a vote of ayes and nays (providing two-thirds of all the members of such council shall vote therefor), order and direct that a survey and plat of such city shall be made by competent persons, to be chosen by such council. And when any such survey and plat shall have been made, the common council of such city may adopt such survey and plat, by resolution, by a vote of ayes and nays, providing three-fourths of all the members of such common council shall vote therefor. And when a certified copy of the resolution ordering such survey and adopting the same, with the vote thereon, and the names of the members voting for and against

the same, signed by the mayor and clerk, and attested by the seal of such city, shall have been recorded, together with the survey and plat, in the office of the recorder of the county in which such city may be located, the said survey and plat shall be deemed and taken as adopted by such city for all purposes whatsoever; and the original, or the record thereof or any duly certified copy thereof, shall be admissible in evidence in any judicial proceeding in all courts of justice, in all cases and for all purposes.

Resolution Ordering Survey.

Whereas, no sufficient survey of this city has ever been made, therefore

It is ordered and directed that a complete survey and plat of the city be made, and A. B., C. D., and E. F. are hereby chosen to make such survey and plat.

Certified Copy of Resolution Adopting Survey, with Journal Entry Showing the Vote.

Whereas, A. B., C. D., and E. F. have made a complete survey and plat of this city, in pursuance of the order of the council, choosing them for that purpose, adopted on the ——— day of ———, 18—, and have filed said plat with the clerk of this city, therefore

Resolved, by this council, that such survey and plat be and the same is hereby adopted by this city as the official survey and plat thereof. The mayor of this city is hereby requested to sign a certified copy of said survey and plat, the city clerk to attach his signature, and cause the same to be recorded in the recorder's office of the county of ———, State of Indiana.

Which resolution was adopted by the following vote, to wit: Those voting in favor of the adoption of said resolution, were X, Y, Z, U, O, M, and L—eight; those voting against its adoption, were R and T—two. Three-fourths of all the members of the council having voted for its adoption, it was declared by the mayor in open council duly adopted.

Mayor's Certificate.

I, L. U., mayor of the city of ———, State of Indiana, hereby certify that the above is a full, true and complete copy of a resolution adopted by the common council of said city on the ——— day of ———, 18—, and journal entry thereof, and that said resolution was adopted by a three-fourths vote of the ayes and nays of all the members of said common council. I also certify that the survey and plat hereto attached, marked "Exhibit A," which I have signed, is the survey and plat referred to in said resolution and adopted by said common council.

Sec. 3250. Survey and plat. 2. Whenever any survey and plat of any city shall have heretofore been made, and such city may desire to adopt the same, it shall be competent for such city to do so by resolution of the common council thereof, by a vote of ayes and nays, providing three-fourths of all the members of such common council shall vote therefor. And when such resolution adopting the said survey and plat, with the names of the members voting for and against the same, duly authenticated as provided in the preceding section, shall have been recorded, with the said survey

and plat, in the office of the recorder of deeds of the county in which such city is located, the same shall be deemed and taken as adopted by such city for all purposes whatsoever, and the original plat and survey, or the record thereof or any copy thereof, duly authenticated by the mayor and clerk, under their hands and attested by the seal of such city, shall be admissible in evidence in any judicial proceeding in all courts of justice, in all cases and for all purposes.

Forms to § 3249 can be modified and used.

SEC. 3251. To be kept by city clerk. 3. The original survey and plat, when recorded by the recorder, shall be deposited in the office of the clerk of such city for safe-keeping.

SEC. 3252. Law applies to towns. 4. The provisions of this act shall extend to all towns incorporated under the authority of this State. In such incorporated towns as have a board of trustees instead of a common council, the duties required by this act to be performed by the mayor shall be performed by the president of the board of trustees, and the duties required to be performed by the common council shall be done and performed by the board of trustees thereof.

[1881, p. 56. Approved and in force March 3, 1881.]

SEC. 3253. Legalized plats. 2. The acknowledgments of all plats of towns and cities, and of all additions thereto, heretofore taken and certified by any officer provided for in section 3374, are hereby legalized; and the recording of such plats and additions as have heretofore been acknowledged before and certified by any officer provided for in said section is hereby declared to be valid and effectual in law to all intents and purposes.

[1891, p. 386. Approved March 9, 1891, and in force June 3, 1891.]

SEC. 3253*a*. Ground platted within a city or town. Whenever any property owner in any incorporated city or town of this State shall plat any unplatted realty lying within the corporate limits of said city or town into in-lots or out-lots, or shall plat any out-lot within any city or town into in-lots, he shall, before recording the said plat, submit the same to the common council of such city, or the board of trustees of such town, for approval; and such common council or board of trustees shall, by special committee thereof, and without expense to such property owner, carefully examine the said plat, and the territory platted, and shall have authority to approve or disapprove the same. And the county recorder is hereby prohibited from recording any such city or town plat without the same be accompanied with the certificate of such town or city clerk, attested by the corporate seal, certifying that the plat has been approved by the common council or board of trustees, as the case may be. For any violation of this act the

recorder shall, upon conviction, be fined in any sum not more than three dollars.

This section operates as a repeal of the act of 1885 (Acts 1885, p. 150; El. Sup. §§ 824 and 825), and also of the act of 1889. (Acts 1889, p. 263; El. Sup. §§ 784 to 786.)

Petition Submitting Plat.

To the Common Council of the City of ——— :

I herewith submit to you for your approval a plat of land, platted for the purpose of being attached to said city as an addition thereto, so that the same may be recorded in the recorder's office of ——— county, Indiana.

Dated ———, 18—. A. B.

Resolution of Reference.

Resolved, that the plat of an addition to this city submitted by A. B. be and the same is hereby referred to C. D., E. F., and G. H., members of this council, as a committee to carefully examine the same; and they are hereby empowered to approve or disapprove it.

Approval.

We, C. D., E. F., and G. H., members of the common council of the city of ———, State of Indiana, appointed on the ——— day of ———, 18—, by said council as a committee to examine and approve or disapprove the annexed plat of A. B., hereby certify that we have examined said plat and hereby approve it, and authorize the recorder of ——— county, State of Indiana, to record the same in the records of his office.

Dated ———, 18—.

C. D.,
E. F.,
G. H.

Committee's Report to Common Council.

To the Common Council of the City of ———:

Your committee to whom was referred for examination the plat of an addition to this city submitted by A. B., hereby report that we have examined the same, and have duly approved it by indorsement thereon. We herewith return said plat duly indorsed as aforesaid.

Dated ———, 18—.

C. D.,
E. F.,
G. H.

Adoption of Committee's Report.

Resolved, that the report of C. D., E. F., and G. H., approving the plat of A. B., submitted by him to this council on the ——— day of ———, 18—, be and the same is hereby adopted.

Certificate of Clerk.

State of Indiana, ——— County, ss:

I, L. X., clerk of the city of ———, of said State, hereby certify that the annexed plat has been presented to the common council of said city and duly approved by a committee appointed by said council to examine the same, as appears by indorsement thereon, which approval was adopted by said council on the ——— day of ———, 18—; and the recorder of said county is hereby authorized to record the same in the records of his office.

Witness my hand and the seal of said city, this ——— day of ———, 18—.

[Seal.]

L. X.,
City Clerk.

ARTICLE 3—TAXATION.

SEC.
3254. Bank-stock.
3255. Auditor's duty.
3256. Auditor's statement.
3257. Assessment.
3258. Collection of taxes.
3259. Tax, a lien.
3260. Bank-stock, how valued.
3261. Agricultural lands, etc.
3262. Assessment.
3263. State tax-law to govern—Proviso.
3264. Non-resident's personal property.

[1873, p. 214. Approved and in force March 4, 1873.]

SEC. 3254. Bank-stock. 1. The shares of capital-stock owned or held by any person or body corporate in any bank or banking association chartered or organized under the laws of this State, or chartered or organized under the laws of the United States, shall be taxed for municipal purposes by the corporate authorities of the incorporated towns and cities of this State in which any such bank or banking association may have its banking-house or place of business; and such shares of stock shall be taxed by the corporate authorities of the town or city in which such bank or banking association may be located, at the same rate as is or may be lawfully assessed by the corporate authorities of such town or city on other taxable property.

1. See § 6350. The stock of the old *State Bank* could not be taxed by cities, 16 Ind. 105; 3 Ind. 43; 7 B. 393, 395; 39 Ind. 450; 11 Ind. 139. See 6 B. 349 (City of Evansville, 39 Ind. 450.)

2. Formerly it was held that the stock held by *non-residents*, although the bank was located within the city, could not be taxed because the *situs* of the shares, for the purpose of taxation was the domicile of the owner, 14 Ind. 27; 15 Ind. 150; 21 Ind. 261, 335; but afterwards the law was changed so as to allow the stock of non-residents to be taxed, and this was held to be a valid exercise of the constitutional powers of the legislature, 22 Ind. 204; 33 Ind. 107; 79 Ind. 351; 33 Ind. 111. Such stock is taxable, although taxed in the State where the owner resides, 79 Ind. 351.

3. The stock is assessed *in* the *name* of the *owner* thereof, 17 Ind. 48; 21 Ind. 261; 15 Ind. 150.

4. The bank must have been in existence and the stock issued by the first day of April to be taxable that year; and if organized after that date, or stock is issued thereafter, it can not be taxed for that year, 17 Ind. 48; 48 Ind. 568.

5. The shares of *National Banks* may be taxed, although some branches of the State bank exist, the shares of which can not be taxed, 48 Ind. 568; 22 Ind. 204; 33 Ind. 107, 111. The authority to tax these shares is given by Congress, 107 Ind. 206, 213. The *real estate* of such banks should be assessed for taxation as realty in the city or town where situated, and not as a part of the capital stock of the bank, 85 Ind. 341.

6. The fact that the general tax law requires an *officer of the bank to list* the stock does *not* render it *unconstitutional*, 33 Ind. 107.

7. In the assessment and taxation of shares of stock of national banks, the owners thereof, if they have no other moneyed capital or credits from which to deduct their *bona fide debts*, are entitled to *deduct* them from the assessed value of such shares of stock, notwithstanding the provisions of the tax law of 1881, 107 Ind. 206; 105 U. S. 322; 100 U. S. 539; 113 U. S. 689, S. C. 20 Cent. L. Jr. 309; 111 Ind. 240. If the assessor refuse to allow the deduction, and the city treasurer, the stock owner may recover whatever is unjustly assessed to and paid by him, 111 Ind. 240.

[1881 S., p. 696. Approved and in force April 15, 1881.]

Sec. 3255. Auditor's duty. 2. It shall be the duty of the auditor of every county in this State in which there is an incorporated town or city having within its corporate limits any bank or banking association contemplated by the preceding section, on or before the first day of May in each and every year, to furnish to the mayor or other principal officer of such town or city, on the demand of such mayor or other principal officer, a certified copy, under his hand and seal of his office, of the sworn statement in writing which may have been delivered to him by the president or cashier of any such bank or banking association in pursuance of the provisions of the seventy-seventh section [§ 6345] of an act entitled "An act concerning taxation," approved March 29, 1881; which copy, so to be furnished by such auditor, shall be a copy of the sworn statement made and delivered, for the current year, to such auditor by such president or cashier, under the provisions of said section.

Sec. 3256. Auditor's statement. 3. If no such sworn statement as contemplated by the foregoing section shall have been made and delivered to such auditor, then it shall be his duty to make and certify, under his hand and seal of his office, a full and true statement of all the information which he may have obtained, in relation to such bank or banking association, its stockholders, and the number and value of shares of stock held or owned by them respectively, by or under the proceedings prescribed by section seventy-eight [§ 6346] of an act entitled "An act concerning taxation," approved March 29, 1881.

The list of "stock" required is not the subscription of stock, but the actual, tangible property of the bank, 5 Ind. 310.

[1873, p. 214. Approved and in force March 4, 1873.]

Sec. 3257. Assessment. 4. On receiving the certified copy of the sworn statement mentioned in the second section of this act [§ 3255], or the certified statement mentioned in the preceding section, such mayor or other principal officer of such town or city shall file the same in the office of the clerk of such town or city; and the assessor or assessors, or other proper officer of such town or city, shall, from the information thus obtained, proceed to enter in the assessment-roll and tax duplicate of such town or city, for the current year, the names of the stockholders of such bank or banking association, and the number of shares and value of the stock held or owned by each stockholder respectively, and shall assess thereon to the owner or holder thereof the proper amount of corporation or municipal taxes according to the rate that may at the time be chargeable on other personal property subject to taxation by such town or city; and if any such stockholder shall be assessed on said duplicate for either real or personal property,

other than such stock, the amount and value of his said stock shall be added to his assessment as personal property.

Sec. 3258. Collection of taxes. 5. The taxes assessed under this act shall be paid by the owners or holders of such stock, respectively, in the same manner as upon other personal property. And all laws and ordinances in force in such town or city in relation to the collection of taxes, and all penalties provided for the non-payment of the same, shall apply to the taxes assessed under the provisions of this act; but nothing herein contained shall be construed to prevent the president, cashier, or other proper officer of any such bank or banking association from paying such taxes, and charging the amount so paid against the owner or holder of such stock, but such taxes may be so paid and charged, and the amount thereof may be deducted from any dividends on such stock which have or may be declared thereon. And on notice given by the proper collecting officer of such town or city that any such taxes have not been paid when due, the same shall be paid by the president, cashier, or other proper officer of such bank or banking association out of any dividends due or to become due on such stock.

Sec. 3259. Tax, a lien. 6. Taxes assessed upon any share or shares of bank-stock under the provisions of this act shall be and remain a lien against such stock until the payment of such tax; which lien shall attach on the first day of April of each year for which the assessment is made; and every transfer of such stock shall be subject to such lien.

Sec. 3260. Bank-stock, how valued. 7. In making the assessment and ascertaining the value of any shares of bank-stock under the provisions of this act, there shall be deducted, from the gross cash value of such shares, the proper proportionate part of the value of any real estate held or owned by any such bank or banking association in this State, and taxed under the laws thereof, in which any part of the capital-stock of such bank or banking association may be invested; and in making such deduction, the valuation of such real estate for taxation shall be the criterion.

[1881 S., p. 698. Approved and in force April 16, 1881.]

Sec. 3261. Agricultural lands, etc. 1. Lands lying within the limits of any city or incorporated town in this State, that are not platted as city or town property, and are not used for other than agricultural purposes or are wholly unimproved, together with all personal property used for the purpose of farming on such lands, shall not be taxed in said city or town, for all purposes, at a higher aggregate percentage upon the appraised value thereof than the aggregate percentage of the tax levy in the civil township where-

in such property is situated: *Provided, however*, That the provisions in this act shall not apply to parcels of land containing less than five acres.

1. This section has been expressly *repealed*, acts 1891, p. 358, but we give it in full with the notes. The act of 1891 contains a saving clause as to pending litigation and right of litigants. This section did not apply to *street improvements*, 34 Ind. 497.

2. The *proviso* was *valid*, 40 Ind. 491; 69 Ind. 344. There is no *constitutional* provision restraining the power of the legislature to confer upon cities and towns the unlimited authority to tax all property within their limits, 59 Ind. 225.

3. For construction of *earlier statutes*, see 40 Ind. 491; 58 Ind. 130. Formerly a school tax could be levied on such property, but not a tax for general city or town purposes, 69 Ind. 344.

4. Any one claiming exemption from taxation under this section had to bring himself fully within its provisions; for it was *construed strictly*, 69 Ind. 344; 8 Ind. 328; 58 Ind. 130.

5. The unplatted land used for agricultural purposes was subject to the general burden of state and county taxes, and also the city school tax, and such special assessments as affect it in common with other city property; but it was subject to taxation by the city or town for general city purposes only to an amount equal to that imposed upon property in the civil township for general township purposes, 106 Ind. 375. Such lands were subject to all special assessments which affect them in common with other property of the city or town, 112 Ind. 178; 69 Ind. 344.

6. By an act of the legislature, of January 8, 1847 (Local Laws 1847, p. 217), the South Bend branch of the State Bank was authorized to lay off into out-lots a tract of land owned by it, adjoining the town of South Bend, the act expressly providing that the lots should not be a part of the town of South Bend, or within its jurisdiction. After the town was incorporated as a city the corporate limits were extended so as to include the property thus platted within the corporate limits. Each of the lots in question contained more than five acres, and were only for agricultural purposes. It was held by the supreme court that the lots were not platted as town or city property, and under this section were not liable to be taxed in excess of the township levy in which the lands were situated, 123 Ind. 290.

[1879, p. 15. Approved and in force March 10, 1879.]

SEC. 3262. Assessment. 1. The office of assessor in cities may be, and in incorporated towns in this State shall be, abolished, and the assessment of personal and real property, as made and returned by the township assessors to the county auditor, as is now provided by law in cities, may, and in incorporated towns shall, constitute the assessment for taxation for city and town purposes, in like manner as for county and state taxes. And the city and town clerks shall have access to the assessor's books in the county auditor's office, and they shall transcribe, therefrom, on their tax duplicates, an accurate list of the taxable property assessed in each city and town, as it appears to have been equalized by the county board of equalization, and thereon compute the taxes levied by the city and town authorities.

1. The office of city assessor and the city board of equalization is now abolished, § 3160. See 61 Ind. 29. The county appraisement becomes the basis of the assessment of city taxes; and the council has no authority to add to the appraisement thus adopted, by way of equalizing the same or otherwise; and it makes no difference that the copy of appraisement was made before the board of revisors met, 64 Ind. 421.

2. There can be no levy of taxes by a town until the county board of revisors has acted; and this section modifies § 3348 with respect to the time a levy shall be made by the town, 82 Ind. 493; 104 Ind. 363. The same would be true of a city.

[1881 S., p. 697. Approved April 16, 1881, and in force September 19, 1881.]

SEC. 3263. State tax-law to govern—Proviso. 2. Hereafter all general laws of the State for the uniform assessment and collection of taxes, and matters connected therewith or growing out of the same, shall apply to all incorporated cities and towns not having special charters, so far as the same shall be applicable: *Provided*, That all city taxes not paid on or before the third Monday of April in each year shall then become delinquent: *Provided, further*, That nothing herein contained shall be held or construed to prevent cities from exercising their discretion as to making assessments by city assessors instead of by county commissioners [township assessors].

1. Assessments, and collections of taxes in cities and towns prior to March 9, 1875, were legalized by an act of 1875 (p. 145).

2. See a similar statute, § 3160, and notes thereon. The office of city assessor is now abolished, § 3160. This section did not authorize a *private sale* by a town marshal, even though the county auditor could at the time make a private sale for county taxes, 70 Ind. 536. Nor does it change the law concerning the *compensation* of the city or town treasurer, 74 Ind. 133. But it so far adopts the state law as to make the *penalties* due on land sold by the city apply to it, 85 Ind. 481. So in an action to quiet title on a county or state tax deed, the amount of city tax due on the land may be allowed and decreed a lien thereon, if the sale is invalid, 104 Ind. 498. The city authorities must take the *valuation* of the *right of way* of a *railroad* from the state board of review, and can not assess buildings or such right of way, 108 Ind. 144. Taxes levied by cities and towns are in effect levied by the *State*, and are not inferior in rank, dignity, or *priority* to taxes levied for state or *county* purposes, 101 Ind. 326; but the lien is inferior to the lien of the State when the State's tax lien is foreclosed in court at the suit of the prosecuting attorney, § 6491.

[1881 S., p. 696. Approved and in force April 15, 1881.]

SEC. 3264. Non-residents' personal property. 3. All personal property, notes, bonds, or other evidences of debt, which are or may be in the hands of any resident of any town or city, as guardian of persons not residing therein, or as executor or administrator of the estate of a person who did not reside therein, and in which such guardian, executor, or administrator has no beneficial interest, shall not be subject to taxation by such town or city for municipal purposes.

See 83 Ind. 211.

ARTICLE 4—WATER-WORKS.

SEC.		SEC.	
3265.	May issue water-works bonds—Vote.	3274.	Application of fund.
3266.	Location and condemnation.	3275.	Reports.
3267.	Assessment and report.	3276.	Funds, how kept.
3268.	Tender of damages.	3277.	Contracts.
3269.	Appeal.	3278.	Investigating committee.
3270.	Trustees of water-works.	3279.	Water free for public uses.
3270*a*.	Board in cities and towns of 5,000 abolished.	3280.	Attachments regulated.
3270*b*.	How duties of board performed.	3281.	Advertising.
3270*c*.	Repealing clause.	3282.	Bonds.
3271.	Duties and pay of trustees.	3283.	Tax, to pay loans.
3272.	By-laws and rules.	3284.	Lien of tax.
3273.	Water-rents.	3285.	Preventing pollution.

[1879 S., p. 88. Approved and in force March 25, 1879.]

SEC. 3265. May issue water-works bonds—Vote. 1. The common council of any city or board of trustees of any incorporated town having a population of less than forty-five thousand, which shall, by ordinance or resolution, decide to erect water-works, or to make extensions or improvements where works have heretofore been constructed, are hereby authorized, for the special purpose of furnishing the inhabitants of such city or town with pure and wholesome water and for fire protection, to issue bonds of such city or town, in denominations not less than fifty nor more than one thousand dollars, and payable at any place that may be designated in the bonds, the principal in not less than five years nor more than twenty years after the date of such bonds, and the interest annually or semi-annually; and such council or trustees may, from time to time, negotiate and sell as many of such bonds as may be necessary for such purpose, in any place and for the best price that can be obtained therefor in cash: *Provided*, That such bonds shall not be sold at a price less than ninety-four cents on the dollar: *Provided*, That the common council of any city or town trustees of any incorporated town, contemplating building water-works under this act, shall, before actually embarking therein, submit the question to the qualified voters thereof, at a special or general election; and voters desiring water-works may vote, "For water-works," or, if opposed, "Against water-works." Such election may be ordered upon a petition of one hundred freeholders and resident tax-payers of such city or incorporated town; and in no case shall the common council of any city or town trustees of any incorporated town erect water-works except upon a majority of all the votes cast at such election upon the said question of water-works, as provided for in this act. Such bonds shall be issued under the provisions of the present law regulating the issue and sale of bonds, so far as the same can be made applicable: *Provided, however*, That the provision of said act that the entire money borrowed by a city shall not at any time exceed two per cent. of the taxable property of such city shall not apply to this act: *Provided further*, That notice of such election, and submission of said question of water-works thereat, shall be published for

three weeks successively before the day of such election, in some newspaper printed and published in such city or town, and of general circulation therein; which said notice shall be signed by the clerk of such city or town.

NECESSARY STEPS.

The following are the necessary steps, in the order in which they should be taken:

1. Petition of one hundred freeholders and resident tax-payers for an election and the order for an election thereon, § 3265.

2. Election resulting in favor of the erection of water-works, § 3265.

3. Location of water-works.

4. Appointment of three commissioners who take an oath, § 3266.

5. Ten days' notice by the council to the commissioners of the appointment to be made, with a description of the premises to be viewed, and a like notice to the land-owners, § 3266.

6. View of the premises by the commissioners, estimate of damages, and report thereof to council, § 3267.

7. Acceptance of report within twenty days (§ 3269) by council and tender of damages, § 3268.

8. Any land-owner aggrieved may appeal within thirty days on filing a bond, § 3269.

9. Establishment of a board of three trustees for the water-works, to be elected at the next general election, § 3270. This board may be established as soon as the erection of water-works is determined by the election of the people, or after the water-works are in progress of erection or completed.

10. Qualification and giving bond by the trustees, § 3271.

NOTES.

1. See § 3106, clause 26, and *notes*. For incorporation of a private water-works company, see R. S. 1881, § 4200 to 4203, and Acts 1889, p. 195; El. Sup. §§ 1130–1140.

2. Where a city negotiated bonds to raise means to construct water-works, and the city treasurer *misapplied* the funds so realized, leaving debts unpaid on account of said works, it was held competent for the city council to issue and sell *other bonds* to make up the deficiency, 49 Ind. 169. While it is the duty of the city council or town trustees to issue and sell the bonds, yet if the city or town treasurer sell them and receive the funds thereby raised, he must account for them, and his bondsmen are liable if he does not; and this is true even though the sale is made by the council or board, if he receives the funds. The duty of the council or board to issue, negotiate and sell such bonds is one which they can not, either by ordinance, resolution or otherwise, delegate to or confer upon the city treasurer or any other officer or person. If they attempt thus to appoint the treasurer, he acts merely as their agent, and is not liable on his bond for the mere sale, assignment and delivery by him of such bonds, pursuant to such agency, 63 Ind. 155.

3. This statute does not repeal clause 26 of § 3106, 86 Ind. 484.

4. So far as applicable, the election law of 1889 controls these elections, § 4710*m*.

5. An act of 1865 (Acts 1865, p. 105) authorized the incorporation of water-works companies for supplying cities and towns with water; but this act was repealed in 1879. (Acts 1879, p. 14.)

Petition.

To the Common Council of the City of ——— :

The undersigned, one hundred freeholders and resident tax-payers of said city, pray that said city construct water-works, under an act entitled "An act to authorize cities and incorporated towns to construct, maintain and operate water-works; issue and sell bonds to pay for such construction, repealing all laws in conflict therewith, and declaring an emergency," approved March 25, 1879, and that an election be called of the qualified voters of said city to determine whether said water-works shall be constructed by said city.

[Signed.]

Resolution of Submission.

Whereas, the following petition has been presented to this council, viz.: [*Set it out with the names*]; and

Whereas, this council finds that said petition was signed by at least one hundred freeholders and resident tax-payers of this city, therefore

It is hereby ordered that an election be held in this city, at the usual voting places, between the hours of 6 a. m. and 6 p. m. on the ——— day of ———, 18—, and that the proposition of building said proposed water-works by the city shall then and there be submitted to the qualified voters of this city.

Election Notice.

Notice is hereby given to the qualified voters of the city of ———, Indiana, that, pursuant to an order of the common council of said city, of the ——— day of ———, 18—, an election will be held at the usual voting places thereof, between 6 a. m. and 6 p. m. on the ——— day of ———, 18—, for the purpose of determining whether said city shall construct water-works, in accordance with the provisions of an act of the general assembly of the State of Indiana, entitled "An act to authorize cities and incorporated towns to construct, maintain and operate water-works; issue and sell bonds to pay for said construction, repealing all laws in conflict therewith, and declaring an emergency," approved March 25, 1879.

[Corporate Seal.]

A. B.,
Clerk of the City of ———.

Election Returns.

The undersigned, inspector and judges of precinct number ———, of the city of ———, State of Indiana, at an election held in said city on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., pursuant to an order of the common council of said city, for the purpose of determining whether the said city should build water-works pursuant to the act of March 25, 1879, the following was the result of the election in said precinct, to wit:

Number of ballots cast "for water-works," . . . . . _____
Number of ballots cast "against water-works," . . . . . _____
Majority "for water-works," . . . . . _____

Dated, ———, 18—.

A. B.,
Inspector.
C. D.,
E. F.,
Judges.

Sec. 3266. Location and condemnation. 2. The common council of any city or board of trustees of any incorporated town,

which shall so determine to build water-works, or to make extensions of such water-works where they have heretofore been constructed or commenced, shall have authority to locate such works with all appendages, and lay such lines of pipe as may be required. And in case the use of any lands, town lots, water-rights, or easements; or use of any water from any pool, lake, or natural stream of water, or if such pool, lake, or natural stream of water shall be found necessary for the building, maintaining, or operating of such works, it shall be lawful for such common council or board of trustees, by themselves or agent, to enter upon and take possession of and condemn the same for these uses, and, for the supply with water, of any conduit pipes, stand-pipes, storage reservoirs, and settling and filtering basins. No artificial provision made for water by any person or corporation, or owned by any person, association, or body, shall be used or condemned without consent of the owner: *Provided*, That any such lands, town lots, water-rights, easements, pools, lakes, and natural streams of water shall not be used for any other purpose than for the use of said water-works. For the purpose of such condemnation and use, such common council or board of trustees shall have jurisdiction for ten miles beyond the limits of such city or town. *Provided further*, That before such common council or board of trustees shall proceed to take possession of such lands, lots, water-rights, easements, pools, lakes, and natural streams of water, for the purpose above mentioned, they shall appoint three commissioners, residents of such city or town, who shall be disinterested freeholders, to appraise and assess the damages accruing to the owners of any lands, lots, water-rights, easements, pools, lakes, and natural streams of water, so taken and condemned for said work. Said commissioners shall, before they proceed to perform their duties as appraisers, take and subscribe an oath or affirmation faithfully to perform all their duties as such appraisers (which shall be indorsed upon or attached to their appointment), and file the same with the clerk of such city or town. Ten days' notice shall be given such commissioners by said council or board of trustees, through the city or town clerk, of the appraisement to be made, giving a complete description of the premises to be viewed. A like notice shall be given by personal service, or by leaving the same with some person of suitable age at their places of abode, to each of the owners or agents of lands, lots, water-rights, easements, pools, lakes, or natural streams to be so taken for such water-works, as in civil cases. If the owners are unknown or non-residents of this State, publication of the same in one or more newspapers of the town, of general circulation, or by posting up written or printed notices in six public places in such city or town (if there be no newspaper published therein) for three weeks, shall be deemed equivalent to such personal service.

Resolution of Appropriation.

Whereas, on the ——— day of ———, 18—, a petition was presented to this council, signed by at leas' one hundred freeholders and resident taxpayers of this city, praying that water-works be erected pursuant to the act of March 25, 1879, authorizing a city to build the same; and

Whereas, pursuant to the prayer of said petition an election was ordered by this council on the ——— day of ———, 18— to be held at the usual voting places within said city on the ——— day of ———, 18—, between the hours of 6 a. m. and 6 p. m., for the purpose of determining whether the city should build water-works, of which election notice was duly given; and

Whereas, as appears by the certificates of the election boards of the several precincts of this city that there was cast ——— ballots for the construction of said water-works and only ——— ballots against their construction, there being a majority of ——— in favor of such construction; and

Whereas, this council has determined to build said water-works, and issue bonds in payment thereof; and

Whereas, by examination and survey it has been found that the following described property is suitable and necessary for the construction of said water-works, to wit: [*Describe it*], and

Whereas, a right of way and consent for the laying of pipes from said property to this city across the following described lands, in the following courses and distance, is essential and necessary in order to construct said water-works, viz.: [*Describe the right of way*], therefore

It is resolved that said property as above described be and the same is hereby appropriated and condemned by this city for the purpose of building and maintaining said water-works; and the right of way, as above described, is also hereby appropriated and condemned for the purpose of conducting the water from said property to this city.

The following disinterested freeholders and residents of this city are hereby appointed to appraise and assess all damages accruing to the owners of said property and right of way hereby appropriated and condemned for said water-works, viz.: A. B., C. D., and E. F.

Certificate of Appointment.

I, X. L., clerk of the city of ———, State of Indiana, hereby certify that A. B. was duly appointed by the common council of said city on the ——— day of ———, 18—, a commissioner for the purpose of appraising and assessing the damages accruing to the owners of lands and property covered by the appropriation thereof by said council for the purpose of erecting water-works for said city under an act of the general assembly of the State of Indiana, approved March 25, 1879; which property is fully described in the order of appointment entered of record in the records of said city in journal No. ——, pages ——.

In testimony whereof, I have hereunto set my hand and seal of said city this ——— day of ———, 18—.

[Corporate Seal.]

X. L.,
Clerk of the City of ———.

Oath.

State of Indiana, County of ———, *ss.*

I, A. B., do solemnly swear that I will faithfully and impartially appraise and assess all damages accruing to the owners of any lands, lots, water-rights, easements, pools, lakes, and natural streams of water taken and appropriated by the city of ———, for the purpose of constructing water-works, under its order of appropriation of the ——— day of ———, 18—, and will faithfully perform all my duties appertaining thereto. So help me God.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Seal.]

L. U.,
Notary Public.

Notice to Commissioners.

To A. B., C. D., and E. F.:

You are hereby notified that on the ——— day of ———, 18—, you were selected commissioners by the common council of the city of ———, State of Indiana, to appraise and assess all damages accruing to the following described property, owned by the persons as stated below, which has been appropriated and condemned by said city, all for the purpose of building water-works for said city, situate in the county of ———, and State of Indiana, viz.: [*Describe it and give names of owners thereof.*]

X. L.,
Clerk of the City of ———.

Notice to Land-Owners.

To [naming each owner]:

You are hereby notified that upon the ——— day of ———, 18—, the common council of the city of ———, State of Indiana, by a resolution, appropriated and condemned the following described properties and easement, under an act of the general assembly of the State of Indiana, approved March 25, 1879, for the purpose of building and constructing water-works for said city, viz.: [*Describe them*]. Said common council appointed A. B., C. D., and E. F. commissioners to appraise and assess the damages accruing to the owners of the above described property; and they will meet at 10 a. m. on the ——— day of ———, 18—, in the council chamber of said city for that purpose.

X. L.,
Clerk of the City of ———.

[This notice can be served by the city marshal.]

Sec. 3267. Assessment and report. 3. Such commissioners, or a majority of them, shall, at the place and time indicated in such notice, proceed to an examination of such lands, lots, water-rights, easements, pools, lakes, and natural streams so desired to be taken or condemned for the use of such water-works; and shall then and there estimate the damages accruing to the owner. They shall view the premises and receive any evidence touching the questions before them; and may, for that purpose, administer oaths to witnesses examined in relation thereto. They shall make a report in writing of the amount of damage, if any, accruing to each owner, and, within ten days thereafter, file the same with the clerk of such city or town.

Report.

To the Common Council of the City of ———:

The undersigned, commissioners appointed by your honorable body by a resolution of the ——— day of ———, 18—, for the purpose of appraising and assessing damages caused by the appropriation of certain properties and lands therein mentioned, report as follows, viz.: Pursuant to the notice given by the city clerk they met in the council chamber of said city at 10 a. m. on the ——— day of ———, 18—, and went and viewed the premises described in the notice given them by the city clerk and received all evidence offered touching the matters before them. After full consideration they appraised and assessed the amount of damages due each of the landed property owners, as given below, viz.:

Name of Owner.	Amount of Damages.

They ask an allowance of ——— dollars each per day for the ——— days they were engaged in making said appraisement and assessment. All of which is respectfully submitted.

A. B.,
C. D.,
E. F.,
Commissioners.

Sec. 3268. Tender of damages. 4. When such report is filed, as in the preceding section required, the common council or board of trustees (if they accept the assessment so made) shall tender or cause to be tendered to the owner of such lands, lots, water-rights, easements, pools, lakes, or natural streams, or their heirs or representatives, the damage awarded by such commissioners; or if not found within the city or town, or if the award is not accepted, then the same shall be kept by the treasurer as a special deposit, subject to the order of such owner or his heirs or representatives.

Sec. 3269. Appeal. 5. The common council or board of trustees shall, within twenty days from the filing of said report, either accept or reject the terms of the same in whole or part. And all parties aggrieved by such report may appeal therefrom, at any time within thirty days after the filing thereof, to the circuit court of the county, upon filing the usual bond with the clerk of such city or town for the payment of costs; but no such appeal shall prevent any such city or town from proceeding with said appropriation, construction, and improvement, as if no appeal had been taken. No other question shall be determined than the regularity of the proceedings in the suit and the amount of damages sustained.

Resolution of Acceptance and Appropriation.

Resolved, that the report filed with the city clerk on the ——— day of ———, 18 —, by A. B., C. D., and E. F., commissioners appointed to appraise and assess damages caused by the appropriation of land and property respectively belonging to [*set out the name of each person to whom benefits are assessed*], be and the same is hereby accepted, and the city treasurer is hereby directed to tender to each individual the amount of benefits to which he is entitled as shown by said report; and there is hereby appropriated out of the city treasury the sum of ——— dollars for that purpose.

Appeal Bond.

We, X. L., R. S., and T. U., acknowledge ourselves bound unto the city of ———, State of Indiana, in the penal sum of ——— dollars. Witness our hands and seals this ——— day of ———, 18—.

Whereas, said city has appropriated the following piece of land belonging to said X. L., for the purpose of erecting water-works, to wit: [*describe it*], and A. B., C. D., and E. F., commissioners appointed by said city for that purpose, within the last thirty days filed a report of the appraisement of damages by reason of such appropriation, from which report and proceedings said X. L. has appealed to the ——— circuit court;

Now, if said X. L. shall prosecute his appeal to final judgment, and pay such judgment as may be rendered against him on such appeal, this bond shall be void, else in force.

X. L., [Seal.]
R. S., [Seal.]
T. U. [Seal.]

Sec. 3270. Trustees of water-works. 6. The common council of any city or incorporated town in which water-works have been constructed or are now in process of construction or extension, or where water-works shall hereafter be ordered, shall establish a board of three trustees, to be known as the trustees of the water-works. Said trustees shall be elected at the annual city election by the qualified voters of such city or incorporated town, and shall hold their office for the term of three years; except that, at the first election under this act, one shall be chosen for one year, one for two years, and one for three years, and thereafter, one of the trustees shall be elected annually.

1. In order to elect water-works trustees it is not necessary that the city council or town board first establish such a board, nor is notice of an election to elect them necessary, after it has been decided to put in water-works, 69 Ind. 218. For debts incurred for water furnished a city or town, prior to the appointment and qualification of a board of water-works trustees, the city council or town board may issue warrants to the city or town treasurer, 86 Ind. 184.

2. In small cities and towns the board of trustees is abolished. See § 3270*a*.

Ordinance Establishing Board of Water-Works Trustees.

Whereas, this city of ——— is now engaged in constructing water-works under an act of the general assembly of the State of Indiana, approved March 25, 1879, therefore

Be it ordained by the city of ——— that there be and there hereby is established and created a board of water-works trustees, to be known as "The Board of Water-Works Trustees of the City of ———," consisting of three members, to be elected at the annual city elections by the qualified voters of this city, and to hold their offices for the term of three years from the date of their election; *provided*, that at the next annual election one shall be chosen for one year, one for two years, and one for three years, and thereafter one of the trustees shall be elected annually.

[1891, p. 64. Approved March 3, 1891, and in force June 3, 1891.]

Sec. 3270*a*. Board in cities and towns of 5,000 abolished. 1. The office of and board of water-works trustees in cities and incorporated towns of less than five thousand population be and the same are hereby abolished.

Sec. 3270*b*. How duties of board performed. 2. In cities and incorporated towns of less than five thousand population, having water-works established, or in which water-works may be hereafter constructed or established, the city common council, or the trustees of incorporated towns, may construct, conduct, manage and control their own respective water-works, and may appoint such agents, employes or committees of councilmen or town trustees, to manage and conduct the same as the common council, or town trustees, shall deem necessary or proper, and for such compensation as may be agreed on, or shall be fixed, by the common council or town trustees.

Sec. 3270*c*. Repealing clause. 3. All laws, or parts of laws, in conflict herewith are hereby repealed.

[1879, p. 88. Approved and in force March 25, 1879.]

Sec. 3271. Duties and pay of trustees. 7. Said trustees shall receive such compensation as the common council or board of trustees may determine; and shall give bond in such sum as the common council or board of trustees shall order, for the faithful performance or their duties and the strict accounting for any funds that shall come into their hands; and they shall manage, conduct, and control the works, furnish supplies of water, collect water-rents, appoint all necessary officers and agents and determine the tenure of office, and amount of salaries of the officers and agents so appointed.

The common council or board of trustees have nothing to do in prescribing the power and duties of the water-works trustees, 69 Ind. 218, 226. If the city council or town board fail to fix the amount of the bond required of the water-works trustees, they may be compelled to do so by mandate, 69 Ind. 218.

Sec. 3272. By-laws and rules. 8. Said trustees shall be authorized to make such by-laws and regulations as they may deem necessary for the safe, economical, and efficient management and protection of the water-works; and such by-laws and regulations shall have the same validity as ordinances, when not repugnant thereto or to the constitution and laws of the State.

The board of water-works trustees credit, allow and direct the payment of claims against the water-works; but for debts contracted prior to the appointment and qualification of the board, the city council or town board, under § 3270, may issue warrants on the city or town treasurer, 86 Ind. 184.

Sec. 3273. Water-rents. 9. For the purpose of paying the expenses of managing and operating the water-works, the trustees of the water-works shall have power to assess and collect, from time to time, a water-rent of sufficient amount, in such manner as they may deem most equitable, upon all tenements and premises supplied with water, and from manufacturing establishments and railroad shops, and for the supply of boilers, locomotive engines, and for all other purposes tending to increase the income of the works.

Sec. 3274. Application of fund. 10. Should there be any surplus money after paying the expenses of operating the water-works, the sum may be applied to the repair, enlargement, or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt.

Sec. 3275. Reports. 11. The trustees of the water-works shall make monthly reports to the common council or board of trustees of the receipts and disbursements of money belonging to the water-works, and an annual report of the condition of the same; and all money collected for water-works purposes, they shall cause to be deposited, weekly, with the treasurer of the city or town; and the receipt therefor shall be, by such collectors, deposited with said trustees or their authorized agent.

Sec. 3276. Funds, how kept. 12. All moneys so deposited shall be kept a separate and distinct fund, subject to the order of said trustees. And all orders drawn by said trustees on the treasurer of the city or town shall be signed by at least two of the trustees, and countersigned by the clerk of the water-works.

The order should show on its face that it is issued by the board, otherwise the treasurer is not bound to pay it, 35 Oh. St. 69.

Sec. 3277. Contracts. 13. Said trustees shall be authorized to make contracts for the erection of water-works buildings, and construction of settling basins and other appendages, and the enlargement and repairs thereof; for the purchase of machinery and the manufacture and laying down of pipe; for the furnishing and supplying with connections of all necessary fire-hydrants for fire department purposes, and for keeping the same in repair; and for all other purposes necessary to the full and efficient management and construction of the water-works; and such contracts shall be subject to the ratification by the common council [or board of trustees].

The city is liable to any one injured by a contractor in the construction of the water-works, 70 Ind. 65.

Sec. 3278. Investigating committee. 14. The common council or board of trustees of any city or incorporated town in which water-works are or may be situated or in process of construction, shall be authorized to appoint a committee of investigation of all books and papers together with all matters pertaining to the management of the water-works, at least once a year, and oftener, if necessary by reason of any neglect of duty or malfeasance on the part of any officer of the works; and any officer of the works found, by said committee, so offending shall be liable to removal from office by the council [or board of trustees].

The city council may remove a city officer even though he is not elected by them. It has full power to inquire into the truth of charges of malfeasance in office, preferred against trustees of water-works, and to remove any or all of them for cause; and a court will not enjoin the council from proceeding to hear and investigate charges preferred against them, and from removing them from office, 119 Ind. 481.

Sec. 3279. Water free for public uses. 15. No charge shall be made by the trustees of the water-works for supplying water for the extinguishment of fires, or for furnishing and supplying connections for fire-hydrants, and keeping the same in repair for fire department purposes; or for the cleansing of market-houses; or for the use of any public buildings belonging to the city or town; or for flushing out sewers or other sanitary purposes.

Sec. 3280. Attachments regulated. 16. All attachments of whatever nature made to the water-pipes or other fixtures belonging to the water-works, and intended for public use, shall be subject to

the same supervision, rules, and regulations as are made for the protection of water-works against abuse, destruction, and inordinate or unnecessary use or waste of water; or the trustees may make general or special rules and regulations for such purposes.

Sec. 3281. Advertising. 17. Said trustees, before entering into any contract for work to be done, shall cause two weeks' notice to be given in one or more daily newspapers of general circulation within the city or town, that proposals will be received by the trustees for performing the work, or the several parts of the same specified in said notice; and the trustees shall contract with the lowest bidder, if in their opinion said lowest bidder can be depended on to do the work with ability, promptness and fidelity; which contract shall be subject to ratification by the common council [or board of trustees], as heretofore provided. But if such be not the case, said trustees may give the contract to the next lowest bidder, or decline to contract, and re-advertise. Or if no daily newspaper be published in such city or town, then such notice shall be published three weeks consecutively in a weekly newspaper of general circulation within such city or town.

Sec. 3282. Bonds. 18. Said trustees shall require bond to be given, with good and sufficient security for the faithful performance of the work; but no member of said board of trustees shall be such security; nor shall any trustee be a contractor, or in anywise, either directly or indirectly, be interested in any such work to be contracted for. Such bonds shall be submitted to the common council [or board of trustees] for approval.

Sec. 3283. Tax to pay loans. 19. For the purpose of paying the principal and interest on the money borrowed for the erection and completion of any water-works or for the extension or improvement of such works, a tax of sufficient amount shall be assessed on all the taxable property of the city or incorporated town, and collected, each and every year, in the usual manner of levying and collecting taxes in the city or town: *Provided, always,* The additional special tax hereby authorized shall not, in any year, exceed fifty cents on each one hundred dollars of taxable property and one dollar on each poll.

Sec. 3284. Lien of tax. 20. The said tax, when levied and assessed, shall be a lien upon the property upon which it is levied and charged against the owners thereof, and shall be placed on the city or town duplicate in a separate column thereof, and be collected as other taxes.

Sec. 3285. Preventing pollution. 21. The jurisdiction of any city or incorporated town owning water-works shall extend, for the purpose of preventing and punishing any pollution of the water, five miles beyond the corporation limits: *Provided,* If any person

owning a water-power or mill property within the limits herein prescribed, in the use or management of which any stream is polluted to such an extent that the water thereof is thereby rendered unfit for use for such city purposes, such property or water-power may be condemned for the benefit of such city; but, before the same is done, such mill property shall be appraised by three disinterested resident freeholders of the county in which such property is situate, one of whom shall be selected by such trustees, one by the owner of such property, which two shall select a third. Said appraisers shall appraise such property as its fair cash value; and upon the tender of the same by the city [or town], and refusal by the mill-owner to accept the value appraised as aforesaid, such business may be enjoined in any court of competent jurisdiction.

On extension of jurisdiction, see § 3154, and *notes*.

ARTICLE 5—CEMETERIES.

SEC.
3286. Conveyance by county board.
3287. Control.
3288. Power to protect.
3289. May vacate.
3290. Petition and finding.
3290*a*. Gift or purchase—Expense of removing bodies.
3291. Removal and re-interment.
3292. Title not affected.

[1867, p. 31. Approved and in force March 4, 1867.]

SEC. 3286. Conveyance by county board. 1. It shall be lawful for the board of county commissioners of any county in this State to convey to the board of trustees of any incorporated town or to the common council of any city, and the successors in office of such trustees or councilmen, any cemetery adjoining to or within the corporate limits of such town or city, upon the application of a majority of the citizens of such incorporated town or city, or on petition of the president and trustees of such incorporated town or the mayor and common council of such city to such county board, notice of which application shall have been given by publication in a newspaper of general circulation printed and published in such city or incorporated town, or by posting up not less than three written advertisements of such intended application in public places therein, for not less than twenty days before any regular session of such board of county commissioners.

Resolution Ordering Petition.

Resolved, that the following petition be presented to the board of commissioners of the county of ———, State of Indiana:

To the Board of Commissioners of the County of ——— :

The undersigned, A. B., as mayor, and C. D., E. F., etc., as members of the common council of the city of ———, respectfully pray that your honorable body will convey to said city the cemetery known as "The Rose Hill Cemetery,"

situate within the corporate limits of said city, and more particularly described as follows, to wit: The cemetery bounded by Grant, Orange, Rose and Hill streets, of said city.

A. B.,
Mayor of the City of ———.

C. D.,
E. F., etc.,
Members of the Common Council of the City of ———.

The clerk is hereby directed to make a certified copy of the above petition and file the same before said board of county commissioners.

[The petition need not be presented until the first day of the term, notice of such intention having been given.]

Clerk's Certificate.

I, X. L., clerk of the city of ———, State of Indiana, hereby certify that the above is a full, true, and complete copy of the petition adopted by the mayor and common council of said city on the ——— day of ———, 18—, a certified copy of which I was, at the time of its adoption, directed to make and lay before the board of commissioners of the county of ———, State of Indiana.

In testimony whereof, I hereunto set my hand and seal of said city, this ——— day of ———, 18—.

[Corporate seal.]

X. L.,
Clerk of the City of ———.

Notice.

To Whom it may Concern:

Notice is hereby given that the mayor and common council of the city of ———, State of Indiana, will apply by petition to the board of commissioners of the county of ———, said State, to have Rose Hill Cemetery, within said city, more particularly described as follows, to wit: The cemetery bounded by Grant, Orange, Rose and Hill streets of said city, conveyed by said board to said city, and that the matter will be heard and determined at the next regular sitting of said board, beginning on the ——— day of ———, 18—.

X. L.,
Clerk of the City of ———.

[A copy of this notice, with an affidavit of publication, should be laid before the board by the first day of the term.]

Order-book Entry.

Whereas, the mayor and common council of the city of ———, State of Indiana, have filed a petition before this board, praying that The Rose Hill Cemetery, more particularly described as follows, to wit: The cemetery bounded by Grant, Orange, Rose and Hill streets, within said city, be conveyed to said city by this board; and

Whereas, it appears that notice of the intention to make such application has been given by publication in the *Weekly Argus*, a paper of general circulation, printed and published in said city, for not less than twenty days before the first day of this present session; therefore

It is ordered that a deed be executed by this board, conveying to said city all right, title, and interest of the county in and to said cemetery as above described.

Deed.

Whereas, the mayor and common council of the city of ———, of the county of ———, and State of Indiana, on the ——— day of ———, 18—, filed a petition before the board of county commissioners of the county of ———, State of Indiana, praying that the cemetery lying within its limits, commonly

known as "Rose Hill Cemetery," more particularly described as follows, to wit: The cemetery bounded by Grant, Orange, Rose and Hill streets of said city; and

Whereas, said board on the ——— day of ———, 18—, ordered a deed to be executed conveying to said city all the right, title, and interest of said county in and to said cemetery, which order was entered in order-book ———, on page ———, of the records of said board; therefore

This indenture witnesseth, That the board of commissioners of the county of ———, State of Indiana, conveys and quit-claims to the city of ———, of said county and State, for and in consideration of the premises above set out, the following real estate situate within said county and State, to wit: The Rose Hill Cemetery, more particularly described as follows, to wit: The cemetery bounded by Grant, Orange, Rose and Hill streets of said city.

In testimony whereof, the said board of commissioners of the county aforesaid, by the members thereof have hereunto set their hands and seals, and affixed the seal of said county, this ——— day of ———, 18—.

R. U., [Seal.]
L. X., [Seal.]
T. U. [Seal.]

[County seal.]

State of Indiana, County of ———, *ss:*

Personally appeared before me, X. L., a notary public in and for said county and State, R. U., L. X., and T. U., members of the board of commissioners of said county, and, for and on behalf of said board, acknowledged the execution of the above and foregoing deed.

In testimony whereof, I have hereunto set my hand and official seal this ——— day of ———, 18—.

[Seal.]

X. L.,
Notary Public.

[The above deed should be first entered of record, as part of the board's proceedings, in their order-book.]

Sec. 3287. Control. 2. Upon such conveyance being made of any such cemetery to any town or city, it shall be their duty to accept and record the same upon their records, and also have the same recorded upon the records of deeds by the recorder of the county in which such town or city may be situated; to take possession of and control, improve and protect and preserve such cemetery; and lay out lots, and make all necessary regulations for interments therein.

Record of Acceptance.

Whereas, this common council on the ——— day of ———, 18—, petitioned the board of commissioners of the county of ———, State of Indiana, praying that the Rose Hill Cemetery, bounded by Grant, Orange, Rose and Hill streets within this city, be conveyed to this city; and

Whereas, in pursuance of said prayer, said board by deed did convey said cemetery to this city on the ——— day of ———, 18—; therefore

Resolved, that said deed of conveyance is hereby accepted; and said deed, which is as follows, is hereby ordered to be entered of record in the record of this council, and to be recorded in the recorder's office of said county, viz.: [*Set out deed in full.*]

Sec. 3288. Power to protect. 3. The board of trustees of such incorporated town or mayor and city council of such city shall have full power to make and enforce all necessary ordinances for the control and protection of such cemetery, and for the prosecu-

tion and punishment of any person for the commission of any waste or trespass within or upon such cemetery, or upon any grave, monument, tomb, or tomb-stone, inclosure or ornament thereof, or any shrubbery or flowers thereon.

[1881, p. 17. Approved March 7, 1881, and in force September 19, 1881.]

SEC. 3289. May vacate. 1. Where any cemetery within or adjoining the corporate limits of any city or incorporated town in this State has been or shall hereafter be conveyed to such city or town by the board of commissioners of the county in which such city or town is situate; or when any such cemetery exists wherein burials have been made by the license or permission of the owner or owners of the lands wherever [whereon] such cemetery is located, or when any such cemetery exists by the dedication of the lands wherever [whereon] situated by the owner or owners thereof for burial purposes, the common council of such city or the board of trustees of such town may vacate such cemetery as hereinafter provided.

[1891, p. 298. Approved March 6, 1891, and in force June 3, 1891.]

SEC. 3290. Petition and finding. 2. When five resident freeholders of such city or town shall, in writing, petition the common council of such city or the board of trustees of such town to vacate such cemetery, the same shall be entered at length in the proper record of proceedings of such common council or board of trustees. And if, upon considering such petition, such common council or board of trustees shall find that such cemetery has fallen into neglect or disuse; that remains of deceased persons have been, from time to time, exhumed and removed therefrom, on account of such neglect; and that the same hinders and obstructs the growth of such city or town, or any part thereof, or that the same is injurious to the health of the neighborhood in which the same is located,—such finding shall be entered at length in said record of proceedings, together with an order that such cemeteries be vacated.

Petition.

To the Common Council of the City of ——— :

The undersigned resident freeholders of said city pray that your honorable body will vacate Rose Hill Cemetery, bounded by Grant, Orange, Rose, and Hill streets of said city.

Journal Entry.

Whereas, A. B. and four other resident freeholders of this city have presented the following petition to this council, to wit: [*set it out*]; and

Whereas, this council finds that said cemetery has fallen into neglect and disuse; that remains of deceased persons have been from time to time exhumed and removed therefrom on account of such neglect; and that said cemetery hinders and obstructs the growth of this city in the parts adjacent thereto; therefore

It is ordered that said cemetery be and the same is hereby vacated; and the city clerk is ordered to prepare a list of the names of all deceased persons remaining interred in said cemetery, and publish the same for three weeks successively in the *Weekly Argus*, of this county, together with a notice to all persons interested, that on and after the ——— day of ———, 18—, this council will proceed to exhume and remove the remains in said cemetery.

Sec. 3290*a*. Gift or purchase—Expense of removing bodies. 2. The common council of such city or board of trustees of such town are authorized and empowered to receive by gift or to purchase ground within or without such city or town, whereon to re-inter bodies removed from such vacated cemetery, and such ground shall be held and maintained as a city or town cemetery. Such city or town shall assign and convey for burial purposes to each owner of a lot or lots in such vacated cemetery a lot or lots in such new burial ground equal in number to the lots owned by him in such vacated cemetery, which lot or lots in such new burial ground shall be taken and held by such lot-owner in lieu of and as compensation for all his rights, title and interest in said vacated cemetery. If the cemetery so vacated shall be a private cemetery, the expense of removing and re-interring the bodies buried thereon, with their proper monuments or grave-marks, together with the cost of purchasing so much of new burial grounds, if the same be purchased, as will equal in area the land embraced in such vacated cemetery, shall be a lien upon the lands embraced in such vacated cemetery in favor of such city or town, which lien may be foreclosed according to the same procedure and upon like notice as required for the foreclosure of mortgages.

[1881, p. 17. Approved March 7, 1881, and in force September 19, 1881.]

Sec. 3291. Removal and re-interment. 3. Such common council or board of trustees shall, thereupon, prepare, as nearly as may be, a complete list of the names of the deceased persons remaining interred in such cemetery, and shall publish the same for three weeks successively in some newspaper of general circulation printed and published in the county, together with a notice to all persons interested, that on and after the time stated in such notice (which shall not be less than thirty days after the last publication thereof), such common council or board of trustees will proceed to exhume the remains in such cemetery. The remains of such persons as may be claimed by their relatives or friends shall be delivered to such claimants for removal and re-interment. The remains of all persons remaining unclaimed shall be removed and properly re-interred in some suitable cemetery or burial-ground in the vicinity of such city or town, by and at the expense of such city or town; and all monuments, grave-stones, or other distinguishing marks shall be removed with such remains, and placed in proper position. Such common council or board of trustees shall also record in the proper record of their proceedings, the

names, as ascertained, of all deceased persons re-interred by them, together with a description of the place of re-interment.

Notice by Publication.

Notice is hereby given that the following is a list of all deceased persons remaining interred in the Rose Hill Cemetery, bounded by Grant, Orange, Rose and Hill streets, of the city of ———, State of Indiana, viz.: [*Give them*].

By order of the common council of the city of ———.

[Seal.]

A. B.,
Clerk of the City of———.

Notice to Interested Persons.

To A. B., etc.: You are hereby notified that on and after the ——— day of ———, 18—, the common council of the city of ———, State of Indiana, will proceed to exhume the remains of all deceased persons interred in the Rose Hill Cemetery, bounded by Grant, Orange, Rose and Hill streets, of said city, and to remove and re-inter the same in [*Describe the place*].

By order of the common council.

[Seal.]

A. B.,
Clerk of the City of ———.

[This may be served by the city marshal, the same as a summons issued by the mayor.]

Record.

Record of the names and place of burial of all persons removed by the city from the Rose Hill Cemetery.

Name.	Place of Burial.	Date of Removal.

Sec. 3292. Title not affected. 4. The title to the cemetery grounds where the same has been or shall be conveyed by the board of commissioners of the county to any city or town, after such cemetery shall have been vacated, shall, in nowise, be disturbed thereby, but the same shall continue in and be preserved to such city or town.

ARTICLE 5*A*—IMPROVEMENT OF STREETS.

SEC.

3292*a*. Improvement of streets.
3292*b*. Resolution—Notice.
3292*c*. Costs, how collected.
3292*d*. Allowance to owner of lot.
3292*e*. Estimates—Repairs.
3292*f*. Final estimate—Report of engineer.
3292*g*. Notice—Amounts placed on tax duplicate.
3292*h*. Bonds—Interest—Lien.
3292*i*. Certificates of estimates—Enforcement of liens—Release of errors.
3292*j*. Collections.
3292*k*. Not applicable to large cities.

[1889, p. 237. Approved and in force March 8, 1889.]

Sec. 3292*a*. Improvement of streets. When the owners of two-thirds of the whole line of lots or parts of lots in any city or incorporated town (and measuring only the front line of such lots as

belong to such persons resident in such city or town) bordering on any street or alley consisting of one whole square between any two streets crossing the same, or if the common council of such city or board of trustees of such town deem it expedient for any reasonable distance less than one whole square or block upon any square or alley, shall petition the common council of such city or board of trustees of such town to have the sidewalk graded and paved, or the whole width of the street graded and paved, or for either kind of improvement, or for lighting such streets according to the general plan of improvements in said city or incorporated town, or for constructing a sewer, the common council of such city or the board of trustees of such town may cause the same to be done by contract, given to the best bidder, after advertising for three weeks in some newspaper of general circulation published within the city or incorporated town, to receive proposals therefor, and the common council of such city or the board of trustees of such town shall have the power to compel the owner or owners of a lot or part of a lot on any street or alley, or upon any part of any street or alley, to repair the sidewalk in front of their respective lots or parts of lots, and in case the owner or owners of any lot or part of a lot on any street or alley, or any part thereof, fail or refuse to repair the sidewalk in front of their lots, or if the owner be a non-resident of said city or town, or can not be found, the common council of such city or the board of trustees of such town may cause such repairs to be made at the cost and expense of the owner or owners of such lot or lots, or if such sidewalk be dangerous, the street commissioner or any officer of said city or incorporated town may cause such repairs to be made immediately, and the city or incorporated town shall have a lien on such lot or lots for the reimbursement to her of the cost of such improvement, and the common council of such city or the board of trustees of such town are hereby invested with full powers to pass by-laws and ordinances providing how and in what manner the repairs or improvements shall be made, and in what manner the cost shall be assessed and collected from such owner or owners, and the manner in which the lien of the city or incorporated town for the expense incurred by her may be enforced against the lot or lots of such owner or owners, and the city or incorporated town may bring an action, by its attorney, in any court of competent jurisdiction to foreclose such lien as a mortgage is foreclosed, and in such action may recover, in addition to the amount of such lien and the costs of such proceedings, a reasonable attorney fee for the use of its attorney, for enforcing such lien, and such property shall be sold without relief from valuation or appraisement laws, and upon the sale of such property, if no other person bid the amount of such judgment and all costs, the city or incorporated town may purchase said property for judgment and all costs, and if not redeemed within one year from the time of such

sale, the sheriff shall issue to the holder of the certificate of sale a deed for such property, and such city or incorporated town, if such deed be issued to it, shall become the absolute owner of such property: *Provided*, That any city or incorporated town having a population of less than ten thousand may, by a two-thirds vote of all the members of the common council of such city or the board of trustees of such town, cause plank or gravel walks, of such dimensions as such council or such board of trustees may determine, to be constructed either upon the natural grade of the sidewalk therein, or any modification thereof established by such council or such board of trustees, and the cost and expense of any such improvement or repairs thereto shall be a lien upon the real estate fronting thereon, and shall be assessed and collected in the same manner as now prescribed by law for collecting assessments for improving streets, alleys and sidewalks: *Provided, further*, That when the State of Indiana is the owner of property on or along the street or streets proposed to be improved, as hereinbefore provided, the common council of such city or the board of trustees of such town shall not contract for the execution of said improvements, involving the State in any liability, without first obtaining the written consent and approval of the auditor and treasurer of state, but such city or incorporated town may make such improvement at its own expense. [El. Sup. § 812.]

ORDER OF NECESSARY STEPS.

The following are the essential steps and the order in which they should be taken:

1. Acquisition of title to street by condemnation, gift or dedication.

2. Petition of the owners of two-thirds, in number of front feet, of the whole line of lots or parts of lots bordering on the proposed improvement, describing generally the work desired, § 3292*a*. If ordered by a two-thirds vote of the council, a petition is not necessary, § 3292*e*.

3. Resolution ordering the work done, and describing the kind it shall be, § 3292*b*, and directing advertisement for bids, § 3292*a*.

4. Publication of the passage of the resolution for ten days, § 3292*b*.

5. Advertisement for bids for three weeks, § 3292*a*.

6. Letting contract to best bidder, § 3292*a*, and execution of contract and bond, § 3292*d*.

7. Estimate by engineer, § 3292*e* and § 3292*f*.

8. Notice of the making and filing of the estimate, § 3292*g*.

9. Reference of estimate to committee on streets.

10. Notice to property owners by two weeks' publication of reference of report to such committee.

11. Appearance and objection to assessment by the land-owner, if he so choose.

12. Report of committee, § 3292*g*.

13. Hearing of aggrieved land-owner, confirmation of report of committee, approval of estimate, and assessment of land or lots, § 3292*g*.

14. Agreement of land-owners, each assessed in excess of fifty dollars, waiving irregularities, § 3292*g*.

15. Order placing assessment on tax duplicate.

16. Ordinance for bonds, § 3292*h*.

17. Issuance of bonds, 3292*i*.

18. In case of a failure to sign the agreement, or where the amount is less than fifty dollars, if the assessment is not paid in twenty days, the contractor files an affidavit for a precept, which the clerk lays before the council, who order a precept; one issued and signed by the mayor, delivered to the treasurer, who serves notice of it upon the land-owner by reading it to him, or gives notice thereof by publication; if not paid within twenty days thereafter, he advertises the lot for sale, sells it, and issues a certificate; if not redeemed during the succeeding year, he issues a deed for such certificate. After notice of the issuance of the precept, the land owner may appeal, § 3292*j*.

NOTES.

1. See § 3161, *notes*, and § 3162, *notes*. Improvement ordered without petition, § 3192*e*.

2. This and the following sections do not repeal the general provisions of the law for the improvement of streets and sidewalks in cities and towns; it is in addition thereto, and proceedings may be had under this law or those laws, at the option of the council or board of trustees

3. As to whether or not a particular improvement is necessary must, of necessity, be left to the *discretion* of the common council or board of town trustees where the improvement is made. This may be determined by the council or board without *notice* to the property owners who are to be affected by such improvement. Assessments to pay for the improvement are made upon the assumption that the property affected is *benefited* in a sum *equal* to the *cost*. But whether or not such improvement benefits the property in a sum equal to its cost is essentially a judicial question, upon which the property owner is entitled to notice and a hearing, 125 Ind. 455.

Petition.

———, Ind., ———, 18—.

To the Common Council of the City of ———, *Indiana:*

Gentlemen: We, the undersigned, owners of real estate represented by the feet front abutting upon ———, from ——— to ———, hereby petition your honorable body for the ———; all as provided for in an act of the general assembly of Indiana, approved March 8, 1889.

Name of Owner.	No. of Feet.	No. of Lot.	Name of Addition or Subdivision.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

PRESENTED TO COUNCIL .....18..

and.....

.....

.....

.....

Between.....street

and.....street

.....

.....

.....

.....

PETITION FOR IMPROVEMENT

by.....

of.....

S. O. No.....18..

INDORSEMENT.

Bid.

———, Ind., ———, 18—.

To the Common Council of the City of ———, *Ind:*

Gentlemen: The undersigned propose to improve ———, from ——— to ———, by ———, including any and all work and material that may be necessary to connect the work done with the adjoining work in a proper and workmanlike manner, and according to the plans and specifications and profile on file in the office of the city civil engineer of said city, and according to the terms of special ordinance No.———, 18—, and according to the laws and regulations of the city, and under the direction and to the entire satisfaction of said city civil engineer, at the following rates, to wit:

	Price written in words here.	Figures here.	
		DOLS.	CTS.
Bowldering, per lineal foot . .	....	....	.....
Curbing with Stone, per lineal ft.	....	....	.....
Paving with Brick, per lineal ft.	....	....	.....
Graveling, per lineal foot . . .	....	....	.....
Double Walk Stone	....	....	.....
Single "	....	....	.....
Bowldered Wings, per square yd.	....	....	.....
. . . .	....	....	.....
. . . .	....	....	.....
. . . .	....	....	.....

———————————
Contractor.

NAME OF BIDDER.		
....	Price.	
	Dols.	*Cts.*
Bowldering	.....	.....
Curbing	.....	.....
Paving	.....	.....
Graveling	.....	.....
Double Walk-stone . . .	.....	.....
Single "	.....	.....
Bowldering, per square yd.	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....
....	.....	.....

Sec. 3292*b*. Resolution—Notice. 2. Whenever cities or incorporated towns subject to the provisions of this act shall deem it necessary to construct any sewer, or make any of the alley or street improvements in this act mentioned, the council or board of trustees shall declare by resolution the necessity therefor, and shall state the kind, size, location, and designate the terminal points thereof, and notice for ten days of the passage of such resolution shall be given for two weeks in some newspaper of general circulation published in such city or incorporated town, if any there be, and if there be not such paper, then in some such paper printed and published in the county in which such city or incorporated town is located. Said notices shall state the time and place, when and where the property owners along the line of said proposed improvement can make objections to the necessity for the construction thereof. [El. Sup. § 813.]

1. This section is *constitutional*, 125 Ind. 407, 455. The council or board of trustees may, under this section, declare in the same resolution the necessity for a proposed street improvement, and order the same to be made. It is not necessary to first pass a resolution declaring the necessity of such improvement, and then afford those interested an opportunity to be heard as to the necessity for the construction of said work before a valid order can be made for such improvements. It is a substantial compliance with the requirements of the statute to embrace both matters in one resolution, and the doing so will not render the proceedings void, 125 Ind. 457.

2. So much of the statutory proceedings as confer jurisdiction are *strictly construed*, but failure to comply with any provision of the statute not jurisdictional is a mere *irregularity* not open to a collateral attack, 125 Ind. 457.

3. An order entered for an improvement is not in the nature of a judgment; it is a mere preliminary step looking to a public improvement, to be made, or not, as the common council in its discretion may determine, from which it *may recede* at any time before the contract for the improvement is concluded, 125 Ind. 457.

4. No action can be taken by the council or board of trustees after resolving to make the improvement, until *notice* is given and an opportunity afforded the property owners to present for the consideration of the council or board such objections as they may make to the necessity for the construction of the work. This object is accomplished by requiring *objections* to be *filed* with the clerk, to be by him laid before the council or board of trustees, 124 Ind. 292.

5. The *notice* must be *published* for two successive weeks, ten days prior to the day fixed for making objections; that is, the *first publication* must have been made twenty-four days before the time therein fixed, 124 Ind. 292.

Declaratory Resolution.

Resolved, by the common council of the city of ———, Ind., that it is deemed necessary to improve ———, from ——— to ———, by ———, in accordance with profile and specifications on file in the office of the city civil engineer. The total cost of said improvement shall be assessed per lineal front foot upon the real estate abutting on said ——— (except the proportion thereof occupied by street and alley crossings, which shall be assessed against the city of ———); said assessments, if deferred, to be paid in ten annual installments. A bond or bonds shall be issued in anticipation of the collection of said assessments, unless the property owners pay said assessments before said bond or bonds are issued, all as provided for in an act of the general assembly of Indiana, approved March 3, 1889.

S. O. No.....18....

DECLARATORY RESOLUTION.

.....

For .....

.....

from .....

.....

to .....

.....

Introduced by .....

In council.....18....

Adopted by council.....18....

Adopted by B. of A.....18....

[The above resolution and the following notice can be dispensed with if desired; and a resolution introduced ordering the work done at once, 125 Ind. 455; 124 Ind. 292.]

Notice of Intention to Improve —— Street.

Notice is hereby given that at a regular meeting of the common council of the city of ——, State of Indiana, held at the council chamber of said city on the —— day of ——, 18—, said council adopted a resolution declaring that it was necessary to improve —— street from —— to —— by [*State kind of improvement in general terms*]. Notice is also given that objections to said proposed improvement may be made at the council chamber of said city at 10 a. m. on the —— day of ——, 18—, before the —— committee of said council [*or*, by reducing the same to writing and filing the same with clerk of said city by 7 p. m. on the —— day of ——, 18—.]

X. L.,
Clerk of the City of ——.

[It is not necessary to give the above notice, under the decision of the supreme court (125 Ind. 455; 124 Ind. 292), and it may be entirely dispensed with. If resorted to it should be given by publication for two weeks in a newspaper of the city or town, the last publication to be ten days before the day set for hearing or for the last day for filing objections with the city clerk.]

(Form A.)

Special Ordinance for Alley.

No.——, 18—.

AN ORDINANCE TO PROVIDE FOR GRADING AND —— THE —— ALLEY —— OF —— STREET, FROM —— TO ——, AND THE COSTS THEREOF.

SEC. 1. *Be it ordained by the Common Council of the City of* ——, *Ind.*, That the —— alley —— of —— street, from —— to ——, be graded according to stakes to be set by the city civil engineer, on the following grade, to wit: Beginning at station ——, and graveled, full width of —— (—) feet, to a depth of —— (—) inches, with the best quality of raked, river or —— creek gravel ——.

All work to be done to the entire satisfaction of the city civil engineer.

SEC. 2. The cost of said improvement of said —— (except the proportion thereof occupied by street and alley crossings) shall be assessed per lineal front foot against the real estate abutting thereon; said assessment, if deferred, shall be paid in ten annual installments, to each of which shall be added interest at six per cent. per annum, payable semi-annually from the date of final estimate

hereon, and collected as provided by law. A bond or bonds shall be issued in anticipation of the collection of said deferred assessments unless the property owners pay their said assessments before said bond or bonds are issued, all as provided for in the act of the general assembly of Indiana, approved March 8, 1889.

SEC. 3. The city civil engineer is hereby directed to set the proper grade stakes, and also to advertise, by publication one day each week for three successive weeks, in the ———, that sealed proposals, for the execution of said work, will be received by the ———, on the day named in said advertisement.

SEC. 4. This ordinance shall take effect and be in force from and after its passage.

Passed by the common council this ——— day of ———, 18—.

Attest: _____ _____
City Clerk. Mayor.

(Form A.)

INDORSEMENT.

S. O. No.....18....

AN ORDINANCE

To.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

DECLARATORY RESOLUTION ADOPTED

By com. council, . day of.....18..

INTRODUCED BY

With.....Petition..

.....

Recorded in record of special ordinances, No.....Page.....

(Form B.)

Special Ordinance for Gutter and Sidewalk.

No.———, 18—.

AN ORDINANCE TO PROVIDE FOR GRADING, BOWLDERING AND CURBING THE ——— GUTTER— OF ——— STREET, AND PAVING WITH BRICK THE SIDEWALK— THEREOF, FROM ——— STREET TO ——— STREET, AND THE COSTS THEREOF:

SEC. 1. *Be it ordained by the Common Council of the City of* ———, *Ind.*, That the ——— gutter— and ——— sidewalk— of ——— street, from ——— street to ———, be graded according to stakes to be set by the city civil engineer on the original grade of said street, and the gutter— bowldered to a width of ——— feet, with the best quality of bowlders, placed upon twelve inches of the best quality of sand, bowlders to range in size from four to ten inches in longest diameter, to be rammed three times and left uncovered until approved by the engineer, and finished with a two-inch coat of sand.

And the outer edge— of sidewalk— to be curbed with the best quality of stratified limestone curbing, not less than four feet in length, ——— inches wide, and bush-hammer dressed and squared to a thickness of four inches, and one-half of their whole depth at each end, and one-half whole depth of the stone on the side next the gutter, and three inches on the opposite side next the top edge; the surface to be dressed in neat manner; curb to be rounded to a radius of four feet at all street and alley corners. To be set closely adjoining each other, with good fitting joint, upon a bed of sand, well packed six inches deep below the bottom of the stone used.

And the sidewalk— graded to a width of ——— (—) feet, and ——— feet

of the inner portion thereof paved with best quality of smooth, hard-burned paving brick, placed upon eight inches of sand, curb to be formed at sides and ends of said pavement by placing brick upon longest edge, brick to be thoroughly settled with a paver's rammer and plank, and left uncovered until approved by the engineer, and finished with a half-inch coat of screened sand.

Double walk-stone, with the necessary bowldering, to be put in on all street and alley crossings. Walk-stone to be not less than four feet in length, fifteen inches wide and six inches thick. The upper surface of the stone to be evenly dressed, the ends squared and hammer-dressed, so as to form joints not exceeding one-eighth inch in width, the whole depth of stone and the sides to be so dressed as to permit the bowlder or blocks to be set closely adjoining the upper surface. And the lawns to be properly dressed up with fine earth, and left perfectly smooth.

All work to be done to the entire satisfaction of the city civil engineer.

SEC. 2. The cost of said improvement of said ——— (except the proportion thereof occupied by street and alley crossings), shall be assessed per lineal front foot against the real estate abutting thereon; said assessment, if deferred, shall be paid in ten annual installments, to each of which shall be added interest at six per cent. per annum, payable semi-annually from the date of final estimate hereon; and collected as provided by law. A bond or bonds shall be issued in anticipation of the collection of said deferred assessments, unless the property owners pay their said assessments before said bond or bonds are issued, all as provided for in the act of the general assembly of Indiana, approved March 8, 1889.

SEC. 3. The city civil engineer is hereby directed to set the proper grade stakes, and also to advertise, by publication one day each week for three successive weeks, in the ———, that sealed proposals, for the execution of said work, will be received by the ———, on the day named in said advertisement.

SEC. 4. This ordinance shall take effect and be in force from and after its passage.

Passed by the common council this ——— day of ———, 18—.

Attest: _____ _____
City Clerk. Mayor.

(Form C.)

Special Ordinance for Street and Sidewalk.

No. ———, 18—.

AN ORDINANCE TO PROVIDE FOR GRADING AND GRAVELING ——— STREET AND SIDEWALKS, FROM ——— TO ———, AND FOR THE COSTS THEREOF.

SEC. 1. *Be it ordained by the Common Council of the City of* ———, *Indiana*, That ——— street and sidewalks be graded according to stakes set by the city civil engineer, on the following grade, to wit: Beginning at station ———, and the roadway graveled to a width of ——— (—) feet, and to a depth of fifteen (15) inches in the center, sloping to ——— inches at the sides, with the best quality of raked, river or ——— creek gravel; and the sidewalks graded to a width of ——— (—) feet, and ——— (—) feet of the inner portion thereof graveled to a depth of ——— (—) inches, with the best quality of sidewalk gravel. And the lawns to be properly dressed up with fine earth and left perfectly smooth.

. . . . . .

All work to be done to the entire satisfaction of the city civil engineer.

SEC. 2. The cost of said improvement of said ——— (except the proportion thereof occupied by street and alley crossings), shall be assessed per lineal front foot against the real estate abutting thereon; said assessment, if deferred, shall be paid in ten annual installments, to each of which shall be added interest at six per cent. per annum, payable semi-annually from the date of final estimate hereon, and collected as provided by law. A bond or bonds shall be issued in

anticipation of the collection of said deferred assessments, unless the property owners pay their said assessments before said bond or bonds are issued, all as provided for in the act of the general assembly of Indiana, approved March 8, 1889.

SEC. 3. The city civil engineer is hereby directed to set the proper grade stakes, and also to advertise, by publication one day each week for three successive weeks, in the ———, that sealed proposals, for the execution of said work, will be received by the ——— on the day named in said advertisement.

SEC. 4. This ordinance shall take effect and be in force from and after its passage.

Passed by the common council this ——— day of ———, 18—.

Attest: _____ _____
City Clerk. Mayor.

(Form D.)

Special Ordinance for use of Asphalt.

No. ———, 18—.

AN ORDINANCE TO PROVIDE FOR GRADING, PAVING WITH STANDARD TRINIDAD ASPHALT SHEET PAVEMENT THE ROADWAY OF ———, WIDENING THE SIDEWALKS THEREOF, RE-SETTING CURB WHERE NECESSARY, AND CURBING WHERE NOT ALREADY PROPERLY DONE, FROM THE ——— LINE OF ——— TO THE ——— LINE OF ———, AND THE COST THEREOF.

SEC. 1. *Be it ordained by the Common Council of the City of*———, That the roadway of ———, to a width of ——— (—) feet, from the ——— line of ——— to the ——— line of ———, be graded according to the stakes set by the city civil engineer on the original grade of said ———, and according to the profile made for said improvement, on file in the office of the city civil engineer of said city.

EXCAVATION AND PREPARATION.

That the roadway be graded to a smooth and true surface to a depth of eight and one-half (8½) inches below the surface of the pavement when completed, as indicated by the profile and stakes set by the city civil engineer, and that soft or spongy places, not affording a firm foundation, and newly made excavations for trenches or other purposes, be dug out and refilled with good earth, well rammed, and the road-bed thoroughly rolled with a steam road-roller, weighing not less than ten (10) tons, until in the opinion of said engineer it is sufficiently packed.

CONCRETE FOUNDATION.

Upon the road-bed thus prepared, a sub-foundation of hydraulic cement concrete shall be laid to a depth of six (6) inches, prepared and applied as follows, to wit:

The sand to be used in the mortar shall be clean, sharp sand, free from loam, dirt or other foreign substance.

The cement used shall be hydraulic cement, equal in all respects to the best quality of Louisville cement; shall be newly made, finely ground and capable of withstanding a tensile strain of sixty (60) pounds per square inch of section, when mixed pure and made into test bars and exposed thirty (30) minutes in air and twenty-four (24) hours in water.

No cement will be allowed to be used that is not branded with the name of the maker. Samples for testing shall be furnished by the contractor, in such manner and at such times as may be required by the engineer. The cement shall be kept dry and under cover until used, and any cement exposed to the weather after testing shall not be used.

Cement may be re-inspected at any time when the engineer may so direct, and if not found to be of proper quality it shall be rejected, and cement so rejected shall be at once removed from the site of work.

Mortar to be made of one part, by measurement, of cement, as above described, and two parts clean sharp sand. The sand and cement to be thoroughly mixed dry in proper boxes, afterwards sufficient water only added to produce a paste of proper consistency, and the whole thoroughly worked with hoes. The mortar always to be mixed fresh before being applied to the broken stone; no mortar to be used in concrete after it has obtained a set.

The concrete shall be make of broken limestone or broken bowlders, and hydraulic cement mortar; the stone to be broken so as to pass through a two and one-half (2½) inch ring in its largest diameter. The stone shall be free from all dust or dirt, and thoroughly drenched, and then mixed with mortar, the general proportion being one part cement to two parts sand, and five parts broken stone. It shall be laid quickly and then rammed until the mortar flushes to the surface. The upper surface will be made parallel with the prescribed surface of the pavement to be laid.

No walking or driving over the uncovered concrete foundation shall be permitted, and it shall be allowed to set for six days, or such time as the said engineer may direct, before any further work shall progress on the same.

WEARING SURFACE.

Upon this concrete base will be laid the wearing surface or pavement proper, the matrix or binding material of which is a cement, prepared with the best quality of refined asphaltum, obtained from the island of Trinidad, and heavy petroleum residuum, unmixed with any of the products of coal tar.

The heavy petroleum oil—the residuum obtained by distillation of petroleum—will be free from water, light oils and other objectionable impurities, and of specific gravity of from 18° to 23° Beaume, and will bear a fire test of 250° Fahrenheit.

The Trinidad asphaltum will be carefully refined, and brought to a uniform standard of purity and gravity.

The refined asphalt and petroleum residuum will be mixed in the following ratio by weight:

Refined Asphalt	100 parts.
Heavy Petroleum Oil	13 to 20 "

But this ratio may be varied according to circumstances, as may be necessary to secure the best practical result.

The pavement mixture, or wearing surface, will be composed of

Asphaltic cement	from 12 to 16	per cent
Clean, selected sand	" 73 to 67	"
Pulverized carbonate of lime	" 15 to 17	"
	100 100	

In order to make the pavement uniform and to secure the best results, the proportion of asphaltic cement may be varied according to the quality and and character of the sand.

The proportion of the carbonate of lime may be reduced, or it may be omitted entirely upon the approval of said engineer, when suitable sand can be obtained.

The sand and asphaltic cement are to be heated separately to about 300° Fahrenheit. The pulverized carbonate of lime, while cold, will be mixed with the hot sand in the required proportion, and will then be mixed with the asphaltic cement at the required temperature, and in the proper proportion, in an apparatus suited to effect a perfect mixture.

The pavement mixture thus prepared will be laid on the concrete foundation in two coats. The first, called the cushion coat, will contain two to four per centum more asphaltic cement than is given above; it will be laid to such depth as will give a thickness of half an inch after being consolidated by a roller. The second, called the surface coat, prepared as above specified, will be laid on the cushion coat; it will be brought to the ground in carts at a temperature of about 250° Fahrenheit; it will then be carefully spread by means of hot iron rakes, in such a manner as to give a uniform and regular grade, and to such depth that after having received its ultimate compression it will

have a thickness of two (2) inches. The surface will then be compressed by a hand roller; after which, a small amount of hydraulic cement will be swept over it, and it will then be thoroughly compressed by a steam roller of the above weight, the rolling being continued as long as it makes an impression on the surface.

No teaming shall be permitted upon the pavement until the ——— is open for travel by order of the city civil engineer.

MARGINAL FINISH.

There shall be set at the edges of the asphalt pavement, on line with the curb, where it crosses any street or alley, a line of retaining stone, of Medina sand-stone, or other stone equally as good. These stones shall be four (4) inches thick and not less than eighteen (18) inches deep, and so set that their tops shall conform to the surface of the pavement.

SIDEWALKS.

The sidewalks shall be widened so as to allow a ——— (—) foot roadway the center line of which roadway shall be on the center line of said ———, and the lawns neatly dressed up with fine earth to the height and line of the curb.

CURBING.

The outer edges of the sidewalks, where not already properly done, shall be curbed with the best quality of stratified lime-stone, not less than four (4) feet in length, twenty-four (24) inches deep, and four (4) inches thick. The top, ends and face of said curbing to be neatly dressed, so as to form good, even and close joints at the ends, and present a smooth face at least twelve (12) inches from the top of same. The return curb at corners of all streets and alleys to be cut to a radius of four (4) feet. All curbs to be set upon six (6) inches of sand. Where directed by the engineer, the old curb shall be taken up and re-set to proper line and grade.

At the place where catch-basins or sewer-receivers are located, the center curbing shall be of approved granite, and shall have an opening cut into it of such form an dimensions as said engineer may direct.

All work herein provided for shall be connected up in a good, smooth, and workmanlike manner with all intersecting streets, avenues or alleys, without any additional charge.

All work herein provided for shall be done to the entire satisfaction of the city civil engineer.

GUARANTEE.

The contractor will be required to furnish a bond to the city of ———, with at least two sufficient sureties, who shall each justify, in full penalty of the bond. Said bond to be approved by the common council and board of aldermen, and the amount of said bond to be equal to thirty-three and one-third (33⅓) per cent. of the contract. A condition of said bond shall be, that the contractor will, at his own cost and expense, keep and maintain said improvement in good condition for five years from completion of same, and that said contractor will repair said pavement at any time within said five years, whenever directed by said engineer, within ten days after a written notice to that effect is served on said contractor, and in the event the contractor refuses or fails to comply with said order the sureties of said bond will be notified and directed to proceed with the said repairs, as directed by the engineer.

Where the pavement is intentionally cut for pipe-laying or other purposes, or accidentally injured, the contractor in such case must enter into a special contract to make repairs whenever directed to do so by said engineer, at a stated rate named in the bid for paving.

ASSESSMENTS.

Sec. 2. The cost of grading, paving, re-setting curb and curbing of said part of said ———, as aforesaid (except the proportion thereof occupied by the street and alley crossings), shall be assessed per lineal front foot against the

real estate abutting and bordering thereon between the limits aforesaid, under and in accordance with the provisions of an act of the general assembly of the State of Indiana, approved March 8, 1889, entitled "An act concerning powers and duties of cities and incorporated towns and their common councils and boards of trustees, and providing the mode and manner of making street and alley improvements and building sewers, and providing for the mode and manner of enforcing the payment of the costs of street and alley improvements and building sewers, and permitting cities or incorporated towns to issue street and sewer improvement bonds, and repealing all conflicting laws, and declaring an emergency."

The cost of grading, paving, re-setting of curb and curbing of that proportion of said ——— as is occupied by the crossings of streets and alleys and public grounds of the city bordering thereon, shall be assessed against and collected from the city of ———, according to law: *Provided*, That in no event shall the city of ——— be liable for any part of the cost of said improvement other than for such proportion for such street as is occupied by such street and alley crossings and public grounds of the city bordering thereon.

All said assessments, if deferred, shall be paid in ten annual installments, to each of which shall be added interest at six per cent. per annum, payable semi-annually, from the date of final estimate thereon, and collected as provided for by law. A bond or bonds shall be issued to the contractor in payment for said work, unless the property owners pay their said assessments before said bond or bonds are issued, all as provided for in said act of the general assembly of the State of Indiana, approved March 8, 1889.

Sec. 3. The city civil engineer is hereby directed to set the proper grade stakes, and also to advertise, by publication one day each week for three successive weeks, in the ———, that sealed proposals, for the execution of said work, will be received by the ——— on the day named in said advertisement.

Sec. 4. This ordinance shall take effect and be in force from and after its passage.

Passed by the common council this ——— day of ——— 18—.

_____
Mayor.

Attest: _____
City Clerk.

INDORSEMENT.
S. O. No. .....18....

AN ORDINANCE
To provide for improving.....
.....
from .....
to.....
In council.....day of .....18..
ordered filed.....

DECLARATORY RESOLUTION
ADOPTED
By common council,.....day of
.....189..

Advertised .....and .....
Limit.....day of.....18..
In council .....day of .....18..
Read first time.....

INTRODUCED BY
.....
With ..... Petition.
Recorded in record of special ordinances, No.....: Page.....

Sec. 3292c. Costs, how collected. 3. In all contracts specified in the preceding section the cost of any street or alley improvement shall be estimated according to the whole length of the street or alley, or the part thereof to be improved per running foot, and the costs of any such sewer shall be apportioned among the lands, lots and parts of lots, benefited thereby, and according to such benefits without regard to the assessment for taxation of such

property, and the city or incorporated town shall be liable to the contractor for the contract price for said improvement, and the owners of lots or parts of lots bordering on such street or alley, or the part thereof to be improved, or of the lots or parts of lots benefited by the construction of such sewer shall be liable to the city for their proportion of the costs in the ratio of the front line of their lots owned by them to the whole improved line for street and alley improvements, and for the construction of such sewer for the benefit of such lots or parts of lots thereby, and the city or incorporated town shall have a lien upon such lots or parts of lots, respectively, from the time such improvement is ordered, for such costs of improvement, collectible as hereinafter provided, and in all cases where such improvement shall have been made, or may hereafter be made on any street or alley running along or through any unplatted lands lying within the corporate limits of such city or incorporated town, the cost of such improvement shall be estimated according to the whole length of the street or alley, or the part thereof to be improved per running foot, and the owners of such unplatted lands bordering on such street or alley, or the part thereof to be improved, shall be liable to the contractor for their proportion of the cost, in the ratio of the front lines of such unplatted lands owned by them to the whole improved line; and in making the assessment against such owners for the improvement of such lots or parts of lots and unplatted lands shall be assessed upon the ground fronting or immediately abutting on such improvement back to the distance of one hundred and fifty feet from such front line, and the city or incorporated town and the contractor shall have a lien theron for the value of such improvement: *Provided, however,* That where such land is sub-divided or platted the land lying immediately upon and adjacent to the line of the improvement and extending back fifty feet shall be primarily liable to and for the whole cost of the improvement and, should that prove insufficient to pay such costs, then the second parcel and other parcels in their order to the rear parcel of said one hundred and fifty feet shall be liable in their order. Such assessments, with the interest accruing thereon, shall be a lien upon the property so assessed and shall remain a lien until fully paid and shall have precedence over all other liens, excepting taxes, and shall not be divested by any judicial sale, and if such city or incorporated town shall fail, neglect or refuse to promptly enforce and collect such assessment when due, the owner or holder of any of the bonds or certificates hereinafter mentioned may foreclose such lien or liens as a mortgage is foreclosed in any court of competent jurisdiction, and shall recover in addition to the amount of said bonds and interest and all costs, a reasonable attorney's fee. The amount realized by the sale of any of such property, or the payment of such assessment after the payment of the costs of such proceeding, shall, to the extent of such assessment, with

interest thereon, be applied pro rata to the payment of the then outstanding bonds or certificates herein mentioned, without reference to the time of the maturity of the bonds or certificates. Any mistake in the description of the property or in the name of the owner shall not vitiate the lien of such assessment. Such city or town shall be liable and pay for all that part of such street or alley improvement as shall be occupied by the street and alley crossings, and may order that any part of the total cost of any of the improvements in this act mentioned shall be paid out of the general fund. [El. Sup. § 815.]

See § 3292*e*, *note*, on liens.

[1891, p. 323. Approved and in force March 6, 1891.]

Sec. 3292*d*. Allowance to owner of lot. 4. Whenever the owner of any lot or part of a lot, before the letting of such contract, shall have made any improvement in front of his lot or part of a lot, in accordance with the general plan for the improvement of such street or alley, and under the direction of the city or town engineer, he shall be entitled to a reasonable allowance therefor, upon his proportion of the cost of such improvement, which reasonable allowance shall be determined by the said engineer: *Provided*, That the common council of such city, or board of trustees of such incorporated town, may require all contractors for street and sewer improvements to give bonds, with good and sufficient freehold surety, for the faithful performance of the work, and that all contracts made by any city or incorporated town, or by any officer under the authority thereof, for public improvements or otherwise, in the profits whereof any officer shall be interested, directly or indirectly, shall be void: *And provided, further*, That after receiving bids for the improvement of any street or alley, or the construction of any sewer, as aforesaid, and in case all such bids are rejected as unsatisfactory by reason of the bids being for too great a price, or the bidder failing to give a satisfactory bond, or for any other cause deemed sufficient by such common council or board of trustees, then, and in such case, the common council of any city, or the board of trustees of any incorporated town, may order the work to be done by the street commissioner of such city or the marshal of such town; but in such case the total cost of the work, to be assessed against the property owners, shall not be in excess of the lowest responsible bid for said work, which cost shall be assessed and collected, and bonds may be issued therefor, as provided in case of the letting of the work by contract, or the council or board of trustees may, in such case, re-advertise for bids for said work.

[1889, p. 237. Approved and in force March 8, 1889.]

Sec. 3292*e*. Estimates—Repairs. 5. When any such contract shall be made, or shall have been heretofore made, and shall have been in progress of fulfillment, the common council of such city or the board of trustees of such town shall have power to cause estimates to be made from time to time of the amount of work done by the contractor, and to cause the same to be paid out of the treasury, deducting a reasonable amount or percentage to secure the completion of the contract, until the whole shall be finished, and to prescribe the time in which the whole shall be completed, and such estimates shall be a lien upon the several parcels of ground upon which they are assessed to the same extent that taxes are a lien, and shall have the same preferences over other demands, and such liens shall be in favor of the city or incorporated town, and the owner of the certificate or bonds hereinafter mentioned to secure to the city or incorporated town and such owners, the reimbursement for such cost of improvement hereinafter provided for. The common council of such city or the board of trustees of such town, with the concurrence of two-thirds of the members thereof, may order or cause any or all of the improvements mentioned in the first section of this act, and repairs of any kinds of streets and alleys to be made in like manner, without such petition, and either charge and cause any or all of the expenses thereof to be assessed and collected, as hereinafter provided, when petition is made, or if it is deemed just and right by the common council of such city or the board of trustees of such town to cause such expenses, or any part thereof, to be paid out of the general revenue of the city or incorporated town. [El. Sup. § 816.]

There is a seeming conflict between this section and 3292*c*. This section declares that the "estimates shall be a lien upon the several parcels of ground upon which they are assessed to the same extent that taxes are a lien." This quotation is taken from § 3164, under which it was held that there was no lien on the lot abutting upon the improvement "until the estimate had been made," 39 Ind. 119, 38 Ind. 289. But by § 3292*c* it is provided that the city or town "shall have a lien upon such lots or parts of lots, respectively, from the time such improvement is ordered, for such costs of improvement." Under § 3164 the mere ordering of the improvement created no lien, 39 Ind. 119. Standing alone, § 3292*e* creates no lien on the land until the assessment is made; but taken in connection with § 3292*c*, this estimate becomes a lien when the work is ordered, although the amount thereof can not be ascertained until after the estimate is brought in.

Sec. 3292*f*. Final estimate—Report of engineer. 6. When any such improvement has been made and completed, according to the terms of the contract therefor made, the common council of such city or the board of trustees of such town shall cause a final estimate of the total cost thereof to be made by the city or town engineer, and the common council of such city or the board of trustees of such town shall require said city or town engineer to

report to the common council of such city, or the board of trustees of such town the following facts touching said improvement:

First. The total cost of said improvement.

Second. The average cost per running front foot of the whole length of that part of the street or alley so improved.

Third. The name of each property owner on that part of the street or alley so improved.

Fourth. The number of front feet owned by the respective property owners on that part of said street so improved.

Fifth. The amount of such cost for improvement due upon each lot or parcel of ground bordering on said street or alley, which amount shall be ascertained and fixed by multiplying the average cost price per running foot by the number of running front feet of the several lots or parcels of ground respectively.

Sixth. The full description, together with the owner's name, of each lot or parcel of ground bordering on said part of said street so improved.

Seventh. In the case of the construction of a sewer, a description of each lot or parcel of lot benefited thereby, together with the owner's name and the fair proportion of the cost of such sewer, according to the benefits conferred thereby that should be assessed against such lot or part of a lot. [El. Sup. § 817.]

[The following form of assessment may be used when a partial assessment is made, by leaving out the total cost.]

Report of Engineer on First and Final Estimate.

Office of City Civil Engineer, ——— *Ind.*, ——— 18—.

State of Indiana, ——— *County, ss.*

A first and final estimate for grading ———, from ——— to ———, authorized by special ordinance No. ———, 18—, based upon the terms of the contract of ———, contractor— for said work; approved by the common council the ——— day of ———, 18—.

Total length frontage of improvement . . . . . ———feet.
Total cost of improvement . . . . . $———
Average cost per lineal foot front . . . . . $———
Total allowance to property owners . . . . . $———
Total cost of work done by contractor . . . . . $———

NO.	OWNERS' NAMES.	NUMBER OF		DESCRIPTION.	NUMBER OF			ADDITION OR SUBDIVISION.	TOTAL COST OF IMPROVEMENT.		AMOUNT ALLOWED PROPERTY OWNER FOR WORK ALREADY DONE.		ASSESSMENT FOR WORK DONE BY CONTRACTOR.	
		Feet.	In.		Lot.	Square.	Out-Lot.		Dollars.	Cts.	Dollars.	Cts.		
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
12														
13														
14														
15														
16								Total,						

I hereby certify that the above estimate is correct.

CITY CIVIL ENGINEER.

A FIRST AND FINAL ESTIMATE
in behalf of
.....
For improving.....
.....
from.....
.....
to .....
Authorized by S. O. No..... 18..,
based upon the contract approved
by the common council the .... day
of ..... 18..

In council ..... day of .....
..... 18..
Referred to committee on streets
and alleys.
Above committee report .... day
of ..... 18..
.....
.....
.....

Estimate approved by common
council the .... day of ..... 18..
.....
City Clerk.

RECORDED IN ENGINEER'S RECORD
No..... .....Page.....

Resolution of Acceptance of first Assessments.

Resolved, by the common council of the city of ———, that the accompanying first estimate in behalf of ——— be and the same is hereby adopted as the estimate of the common council of said city, and that the property owners are hereby required to pay the sums set opposite their respective names.

[1891, p. 323. Approved and in force March 6, 1891.]

SEC. 3292*g*. Notice—Assessments placed on the duplicate. 7. Upon the filing of the report provided for in the last preceding section, the common council of such city, or the board of trustees of such town, shall give two weeks' notice in a newspaper printed and published in such city or incorporated town, if any there be, and if there be no such newspaper, then in a newspaper printed and published in the county in which such city or incorporated town is located, of the time and place when and where a hearing can be had upon such report before a committee to be appointed to consider such reports, and such committee shall make report to the common council of such city, or the board of trustees of such town, recommending the adoption or alteration of such report, and the common council of such city, or the board of trustees of such town, may adopt, alter or amend such report and the assessments therein. Any person feeling aggrieved by such report shall have the right to appear before such committee and the common council of such city, or the board of trustees of such town, and make objection thereto, and shall be accorded a hearing thereon. And the common council of such city, or the board of trustees of such town, shall assess against the several lots or parcels of ground the several amounts which should be assessed for and on account of such improvement; which said amounts shall bear interest at the rate of six per cent. per annum from the time of the finding of the completion of said improvement by the common council or board of trustees, as mentioned in section six of this act. Should any one of such assessments exceed the sum of fifty dollars, then if the owner of the lot or parcel against which said assessment is

made, may, if he within two weeks after the making of such assessments, shall promise and agree in writing, to be filed with the clerk of such city or town and to be spread of record by him in consideration of the right to pay his or their assessment, or respective assessments in installments, that they will not make any objections to illegality or irregularity as to their respective assessments, and will pay the same, with interest thereon, at the rate of not exceeding six per centum per annum, as shall by ordinance or resolution of the common council of such city, or board of trustees of such town, be prescribed and required; he or they shall have the benefit of paying said assessments in ten annual installments, as hereinafter provided. Any owner of any lot who has been assessed more than the sum of fifty dollars thereon for the cost of such improvement, who will not promise and agree in writing as herein provided, and all other owners of lots or parcels wherein assessments less than fifty dollars have been, or have heretofore been made against any one lot or parcel, shall be required to pay his or their assessment in full when made, and the same may be collected according to the provisions of amended section ten [§ 3292*j*] of this act, or the contractor or his assigns may foreclose such assessment as a mortgage is foreclosed in any court of competent jurisdiction, and shall recover in addition to the amount of such assessment with interest, all costs, and a reasonable attorney's fee. Whenever any payment shall be made upon any of such assessments, it shall be the duty of the treasurer, contractor or owner of the assessments, bonds or certificates, or installments of assessments, as hereinafter provided, receiving such payment, to enter upon the proper record the receipt of such money, and such receipt shall be a discharge of the lien of such assessments to the extent of such payment, and upon the payment of any bonds or certificates as are issued under this act, they shall be surrendered to and cancelled by the treasurer; when bonds have been requested as aforesaid, then the common council of such city or board of trustees of such town shall cause the said assessments amounting to more than fifty dollars and bonds requested therefor to be placed upon the city or incorporated town tax duplicate and charged against the several lots or parcels of grounds as follows, [viz.]: Ten per cent. for each successive year for ten years, to which several amounts shall be added and placed on the duplicate, interest at six per cent. per annum, payable semi-annually, which shall be calculated from the time of the acceptance of the work by the common council or board of trustees, until the several allowances fall due; and the first ten per cent. shall be due and payable when the first tax falls due, and is payable after such assessment is made; and said assessment, together with the interest thereon, shall be a lien upon the several lots or parcels of ground to the same extent that taxes are a lien upon such property, and shall be collectible in the same way that taxes are collectible,

or in such manner as the common council or board of trustees, by ordinance, shall prescribe; and the law governing the collection of taxes shall, so far as the same is applicable, regulate and govern the collection of such assessment, and such assessment, and the proceeds arising therefrom, shall constitute a special fund for the payment of the costs of such street, alley and sewer improvement, and the bonds and certificates hereinafter mentioned, and for no other purpose.

1. The notice provided for in this section is sufficient to protect the rights of the property holders affected, 124 Ind. 292; 125 Ind. 457.

2. The city or town is liable to pay in cash the expense of so much of street and alley improvements as are occupied by the street and alley *crossings*, upon the completion and final estimate of the work, and hence no *debt* results from such improvement, 124 Ind. 292.

3. The filing of a *waiver* under this section precludes the land-owner questioning the validity of the provision of the act that "no suit shall lie to restrain or enjoin the collection of such assessment," and that the validity of such assessment shall not be questioned. But these provisions apply only to those persons who, in consideration of their right to pay their assessments in semi-annual installments, agree in writing, to be filed with the clerk, that they will not make any objection to the legality or regularity of their assessments, and is constitutional, 124 Ind. 292.

Order of Reference.

Ordered that the final estimate and report of the city civil engineer for the improvement of Oak street, between Olive and Pine streets, made to this council on the ——— day of ———, 18—, be and the same is hereby referred to the committee on streets and alleys; and the clerk is hereby ordered to give the proper notice that said committee will meet at the council chamber at 7:30 p. m. on the ——— day of ———, 18—, where a hearing can be had upon said report.

Notice.—Street Assessment —— Street.

———, Ind., ———, 18—.

Notice is hereby given that on the ——— day of ———, 18—, at ten o clock a. m., in room 4, in the office of the city clerk of said city, before the committee on streets and alleys of the common council, a hearing will be had on the final estimate, as submitted by the city civil engineer to the common council on the ——— day of ———, 18—, of the costs of grading and ——— street and sidewalks, from ——— street to ——— street, in the city of Indianapolis, Ind., pursuant to special ordinance No. ———, 18—, and that at same time and place said committee will consider said final estimate. All interested persons are notified to be present and make objection thereto, if any they have.

Attest: _____ The Common Council.
City Clerk.

Report of Committee.

To the Common Council of the City of ———:

The undersigned, members of the committee on streets and alleys, to which was referred the final estimate and report of the city civil engineer in favor of ———, contractor for the .....
.....
.....
.....
pursuant to special ordinance No. ———, dated ———, 18—, respectfully report

that, pursuant to the annexed notice, they met at the council chamber of said city at 7:30 p. m. on the ——— day of ———, 18—, and heard such objections and suggestions as any person interested in said improvement desired to make. After hearing such objections and recommendations, and viewing the improvement, they find that said estimate and report of said engineer is correct in every respect, and recommend its adoption and confirmation [*or*, they recommend that the following alterations therein be made, and when so made that the estimate and report be adopted, to wit: [*Set out the proposed corrections.*]

Land-Owners' Objections to Committee's Report.

To the Common Council of the City of ———:

The undersigned, owner of lot 16 of Wilson's addition to said city, fronting upon that part of Oak street lying between Olive and Elm streets of said city, which has recently been improved, objects to the report of the committee of streets and alleys, filed ———, 18—, touching the final estimate and report of the city civil engineer upon said improvement, for the following reasons, to wit: [*Specifically state the objections.*]

A. B.

Estimate Resolution.

Resolved, by the common council of the city of ———, Indiana, that the report of the committee on streets and alleys, of the common council, recommending that the final estimate, made by the city civil engineer, in favor of ———, contractor for the ———, pursuant to special ordinance No. ———, 18—, be and the same is hereby approved—amended as follows:

.....

That the assessments set forth in said final estimate (as so altered and amended) are hereby approved and confirmed; and there is hereby assessed against the several lots and parcels of ground, as described in said final estimate, the several amounts set opposite and assessed against said several lots and parcels of ground, respectively, for and on account of said improvement.

.....

The city clerk is hereby directed to place said assessments upon the city tax duplicate, and to charge the same respectively against the several lots and parcels of ground against which they have been so assessed, as follows, to wit: Ten per cent. for each successive year for ten years, together with interest on the several amounts so assessed, at six per cent. per annum, payable semi-annually, calculated from the date of the approval of this estimate, until the several amounts fall due. The first ten per cent. of said assessments, with interest on the whole from the date of the approval of this estimate, shall be due and payable on the ——— Monday in ———, 18—; the semi-annual interest on the unpaid balance shall be due and payable thereafter at the dates of the semi-annual payment of city taxes in each year; and on the ——— Monday in ———, in each year thereafter one-tenth of the principal of said assessment, together with the semi-annual interest on the unpaid balance, shall be due and payable, until all is paid.

Provided, however, That the above provision for extending said assessments upon the city tax duplicate, and collecting the same successively in annual and semi-annual installments of principal and interest respectively, shall apply only to the owner or owners of said lots or parcels of ground, who shall promise and agree, in writing, filed with the city clerk of this city, that, in consideration of having the right to pay his or their assessment or respective assessments in installments, they will not make any objection to the illegality or irregularity as to their respective assessments, and will pay the same, when due, with interest thereon, not exceeding six per cent., as shall, by ordinance or resolution of the common council, be prescribed and required.

The said assessments, together with interest thereon, shall, from the date of the approval of this estimate, be a lien upon the several lots and parcels of ground against which they are assessed respectively to the same extent that taxes are a lien upon such property; and the said assessments, when placed upon the city tax duplicate, shall be collected in the same way that city taxes are collected; all said assessments not so extended upon the city tax duplicate, pursuant to the above proviso, shall be at once due and payable and shall be collected by precept and sale, as now provided by law.

The proceeds from such assessments as are so placed on the city tax duplicate shall constitute a special fund to be applied to the payment of the costs of said improvement, and of the bonds and certificates to be issued therefor, and for no other purpose.

S. O. No.....18...

ESTIMATE RESOLUTION.

Under Act, March 8, 1889.

.....Street.

From.....

To.....

Adopted by common council.....

.....18..

.....

City Clerk.

Land-owner's Waiver and Agreement.

———, Ind., ———, 18—.

We, the undersigned, owners of real estate abutting upon ———, from ——— to ———, severally promise and agree, in consideration of having the right to pay, in installments, our respective assessments for the improvement of said ———, as provided for in special ordinance No.———, 18—, that we will not make any objection to any illegality or irregularity as to our respective assessments, and will pay the same when due, with interest thereon at such rate, not exceeding six per cent., as shall, by ordinance or resolution of the common council, be prescribed and required:

Name of Owner.	No. of Feet.	Lot.	Out-lot.	Block.	Name of Addition or Subdivision.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

S. O. No.....18....

WAIVER OF ERROR AND AGREEMENT TO PAY FOR IMPROVEMENT

of

.....

from .....

to.....

Filed in my office this.....

day of ....., 18....

.....

City Clerk.

Order of Common Council.

Whereas, the following persons, respectively, owning the lots, tracts and parcels of land, situated in the city of ———, and State of Indiana, set opposite their names, viz.:

Owners' Name.	No. Lot.	Addition.	Amount of Assessment.

Which was assessed by this common council on the ——— day of ———, 18—, for the improvement of so much of Pratt street as lies between Delaware and Tennessee streets of this city, in the amounts respectively set opposite each above described lot, tract or parcel of land; and

Whereas, the owners of said lots, tracts and parcels of lands have each respectively filed with the clerk of this city a written release of any illegality or irregularity in said assessments in consideration of the privilege of paying said assessments in ten annual installments in accordance with the provisions of an act of the general assembly of the State of Indiana, approved March 8, 1889, and the amendments thereto, and agreeing to pay the amounts respectively assessed to each of them, with interest thereon at the rate of six per centum per annum, as shall by ordinance or resolution of this council be prescribed or required, therefore

Be it resolved, that said agreements are hereby accepted, and the clerk of this city is hereby directed to place upon the city tax duplicate said assessments as above enumerated, and charge against said several lots, parcels and tracts of land as follows, viz.: Ten per cent. for each successive year for ten years, to which several amounts shall be added and placed on the duplicate interest at six per cent. per annum, payable semi-annually, which shall be collected from the ——— day of ———, 18—, [*from the time of the acceptance of the work by the common council,*] until the several allowances fall due.

[1889, p. 237. Approved and in force March 8, 1889.]

Sec. 3292*h*. Bonds—Interest—Lien. 8. The common council of such city or the board or trustees of such town, for the purpose of anticipating the collection of such assessments, shall have power to issue street or sewer improvement bonds for the purpose of raising money with which to pay for such improvements made, and in issuing such bonds the common council of such city or the board of trustees of such town shall be governed by the law now in force regulating the issuing of bonds by cities. The proceeds arising from said bonds shall be applied exclusively to and appropriated and used for no other purpose than the liquidation of the cost of the improvements in this act mentioned. Said bonds shall bear the name of the street or alley improved, or the sewer constructed, and shall be payable, in equal installments, out of the special fund hereinbefore provided in one, two, three, four, five, six, seven, eight, nine and ten years from date, and shall bear interest not to exceed six per cent. per annum, payable semi-annually. In case such city or incorporated town has any money on hand belonging to any fund, which will not be used within the maturity of any

such bonds, such city or incorporated town may invest such money in any of such bonds maturing before such money shall be needed. After the assessment, as herein provided, has been made by the common council of such city or the board of trustees of such town, no suit shall lie to restrain or enjoin the collection of such assessment, and the validity of such assessment shall not be questioned, and such bonds when issued shall transfer to the owner thereof all the right and interest of such city or incorporated town in and to such assessments and the liens thereby created with full power to enforce the collection thereof by foreclosure or otherwise under any of the provisions of this act. And all of such bonds shall be an equal lien upon the property so assessed without priority of one over another. [El. Sup. § 819.]

See § 3158*a* for temporary investment.

These bonds are not the city's obligation nor an indebtedness prohibited by the constitution, § 280. 124 Ind. 292.

Bond Ordinance.

Whereas, the final estimate and report of the city civil engineer upon the improvement of Ray street, from Pearl to Elm streets, shows that there is due thereon A. B., the contractor, $15,000.00; and

Whereas, this council adopted and approved said estimate and report, pursuant to the recommendation of the committee on streets and alleys, on the ——— day of ———, 18—; and

Whereas it appears that the following named persons, owners of the lots and tracts of land, situated within this city, set opposite their names as herein given, each lot or tract assessed respectively with the amount specified below, have each signed and filed with the clerk of this city a written agreement promising and agreeing, in consideration of the right to pay their respective assessments in annual installments, to waive all objections to any irregularity or illegality to such assessments, to wit:

Name of Owner.	Description of Land Assessed.	Amount of Assessment.
	Total,	$——

making a total amount of ——— dollars and ——— cents; therefore,

SEC. 1. Be it resolved by the common council of the city of ———, that for the purpose of anticipating the collection of said assessment, improvement bonds be issued to the amount of $10,000.00 by this city for the purpose of raising money with which to pay for said improvement. Said bonds shall bear the following statement, in addition to any other necessary statements: "Issued for the improvement of Ray street, from Pearl to Elm streets;" and shall be payable in equal installments in one, two, three, four, five, six, seven, eight, nine, and ten years from date, bearing five per cent. interest per annum, payable semi-annually.

SEC. 2. Said bonds shall be issued in the name of the city of ———, signed by the mayor and city clerk, and sealed with the corporate seal of said city;

but the signature of said mayor and clerk to the coupons may be lithographed instead of being written.

SEC. 3. This ordinance shall be in force from and after its passage.

[When the aggregate amount due from the land-owners assessed with more than $50 each is less than the amount due the contractor, bonds can not be issued for the entire amount of the assessment.]

Improvement Bond.

No. —— UNITED STATES OF AMERICA. $——

City of ——, —— *County, State of Indiana.*

The city of ——, in —— county, and State of Indiana, promises to pay to ——, or bearer, at the office of its treasurer, the sum of —— dollars, as follows: Ten per cent. thereof on the —— day of ——, 18—, and ten per cent. on the —— day of —— of each year thereafter, until the whole is paid, with interest at six per cent. per annum upon the unpaid part thereof, payable semi-annually upon the —— days of —— and —— in each year until all is paid. Said installments of principal and said semi-annual interest shall be paid according to the coupons hereunto attached, out of the assessments made upon the following described real estate in the city of ——, —— county, Indiana.

.....

to be collected in payment of the proportionate share of the total cost of the improvement of ——, from —— to ——, as charged against said real estate, which assessments in the order of their collections are severally pledged to the payment of said coupons, without relief from valuation or appraisement laws. The several coupons shall be detached and cancelled in their order, when paid, and on payment of all said coupons this bond shall thereby be fully paid, and shall be surrendered and cancelled.

The city reserves the right to redeem this bond, at any time, by payment of all unpaid installments of the principal, and also the interest to maturity on the first coupon thereafter maturing.

This bond is issued pursuant to the provisions of an act of the general assembly of the State of Indiana, approved March 8, 1889, providing for street, alley, and sewer improvements in cities and towns, and for the mode of making assessments and issuing bonds in payment of the costs of such improvements, and in pursuance of the provisions of general ordinance No. ——, 18—, of said city, ordained and established the —— day of ——, 18—.

In witness whereof the common council of the city of ——, Indiana, have caused this bond and the coupons hereto attached to be signed by its mayor, and attested by the city clerk, and the corporate seal of said city affixed hereto, this —— day of ——, 18—.

_____
Mayor.

Attest:

_____
City Clerk.

Coupon.

THE CITY OF ——, INDIANA,

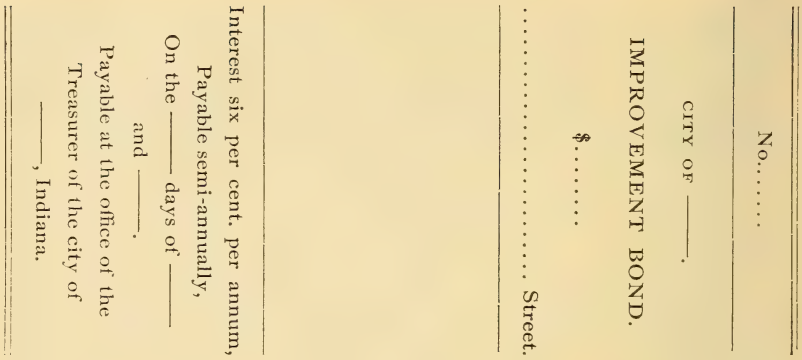
On the first day of ——, 18—, will pay the bearer at the office of its treasurer —— dollars, being ten per cent. of the principal, together with the accrued interest due on improvement bond.

No. ——

_____
Mayor.

Attest:

_____
City Clerk,



SEC. 3292*i*. **Certificates of estimates—Enforcement of liens.** 9. It shall be lawful for such city or incorporated town to provide by ordinance for the issuance of certificates or bonds to contractors, who under contract with the city shall have constructed any such improvement, in payment therefor, each of which certificates or bonds shall bear the name of the sewer, street or alley improved, the time the same shall run, not to exceed ten years, the rate of interest the same shall bear, not to exceed six per cent. per annum, payable semi-annually, and such certificates and bonds shall transfer to the contractor and his assigns all the right and interest of such city or town to, in and with respect to every such assessment and the lien thereby created against the property of such owners assessed as shall avail themselves of the provisions of this act to have their assessments paid in installments, and shall authorize such contractor and his assigns to receive, sue for and collect, or have collected, every such assessment embraced in any such certificate or bond, by or through any of the methods provided by law for the collection of assessments for local improvements, including the provisions of this act. And if the city or town shall fail, neglect or refuse to pay said certificates or bonds, or to promptly collect any of such assessments when due, the owner of any of such certificates or bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds or certificates and the interest thereon, a reasonable attorney's fee, together with the costs of such suit. Any number of holders of such certificates or bonds for any single improvement may join as plaintiffs, and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. And such bonds and certificates shall be equal liens upon the property for the assessments represented by such bonds or certificates without priority of one over another to the extent of the several assessments against the several lots and parcels of lands. [El. Sup. § 820.]

Tax Duplicate of the City of ——, —— County, and State of Indiana, containing Street, Alley, and Sewer Improvement Assessments.

Improvement of ——, *from* —— *to* ——, *by* ——, *Contractor, under Special Ordinance No.* ——, 18—, *ordained* ——, 18—, *in pursuance of an Act of the General Assembly, approved March* 8, 1889.

Final estimate adopted and assessment made a lien on the following described lands situated in said city, county, and State, by resolution of the common council of said city, passed by the common council on the —— day of ——, 18—.

NAME.	DESCRIPTION.	Feet.	Lot.	Square.	Out-Lot.	Total Assessment.	When Due.	When Paid.	First 10 per cent. and Interest.	When Due.	When Paid.	Second Semi-Annual Interest.	When Due.	When Paid.	Second 10 per cent. and Interest.	When Due.	When Paid.

This tax sheet should be long enough to include the twenty semi-annual payments. Four semi-annual payments, or two years, are here given; but owing to its length, eight years are here omitted.

[1891, p. 323. Approved and in force March 6, 1891.]

Sec. 3292*j*. Collections. 10. In case any of the owners of lots or parcels of grounds on which such assessments have been made shall fail, or refuse, for the space of twenty days after the date of the estimate to pay the amount thereof due by such person to such contractor, such contractor shall file his affidavit in the clerk's office of said city, stating that the whole or some part of said assessment remains unpaid showing the amount paid and the amount due; that the estimate thereof has been duly made, and that the work estimated has been done according to contract, it shall be the duty of the clerk at the next, or any subsequent, meeting of the common council to report the said affidavit to the council, whose duty it shall be to cause a precept to issue for the collection of such assessment, or any unpaid balance thereof; which precept shall be signed by the mayor and attested by the clerk, and sealed with the seal of said city, and shall set forth the name of the person against whom the assessment is made; the description of the lot or land on which it is made; the amount of such assessment and the date of the estimate, which shall be directed to the treasurer of such city, commanding him to make such assessment, or unpaid balance thereof, within ten days after receiving such precept, of the owner in whose name such assessment is made; which precept the clerk shall forthwith deliver to the treasurer, who shall serve the same by reading the same, personally, to such owner, or by leaving a copy of such precept at his last or usual place of residence; or, if such owner be unknown, or not a resident of such city, then by publication for three successive weeks in a weekly newspaper printed and published in the city, briefly setting forth the facts of the estimate, the amount due, that the work has been done as contracted, the name of the person whose property is to be sold, the description of the property, and the date of the order of said precept by the said council, and giving notice that if such assessment be not paid within twenty days after publication, he will proceed to make the same by levy and sale of the lot or land whereon the same is assessed. Any owner of land or his representatives aggrieved by such precept, may appeal therefrom, within twenty days after such demand or publication, to the circuit court of the county wherein such city is situated, upon filing sufficient bond with the clerk of said city, conditioned for the payment of whatever judgment may be rendered against such appellant in said court; and such appeal shall stay all proceedings by such treasurer. And the trial of such appeal shall be conducted as other trials of civil causes are conducted in said courts: *Provided*, That no question of fact shall be tried which may arise prior to the making of the contract for the said improvement under the order of the council. The clerk shall, upon the filing of said bond, forthwith make out and certify, under his hand and official seal, a true and complete copy of all papers connected in any way with

the said street improvement, beginning with the order of the council directing the work to be done and contracted for, and including all notices, precepts, orders of council, bonds and other papers filed in said matter—which transcript shall be in the nature of a complaint, and to which the appellant shall answer upon rule; and in case the court and jury shall find, upon trial, that the proceedings of said officers, subsequent to said order directing the work to be done, are regular—that a contract has been made, that the work has been done, in whole or in part, according to the contract, and that the estimate has been properly made thereon—then said court shall direct the said property to be sold and conveyed by the sheriff thereof, as the said treasurer is hereinafter directed to sell and convey property liable to street improvements: *Provided*, That nothing herein shall be so construed as to prevent any person from obtaining an injunction upon the proceedings prior to the making of any such improvements. If no such appeal shall have been taken as aforesaid, it shall be the duty of such treasurer, within ten days after the expiration of said twenty days, to levy said precept upon the lot or land therein described, and to sell the same, or so much thereof as may be necessary to pay such assessment, with costs and charges. But before any such sale, he shall give notice of the time and place thereof, by advertising the same for three weeks successively in a newspaper printed and published nearest to such lot or land, if any such be printed and published within the county wherein such city is situated, and by posting up written or printed notices thereof in at least three public places in said city. And every such sale shall be by public auction, and upon or near the premises, or in the city court-room of said city, in the discretion of said treasurer; and no sale of said lot or land previous or subsequent to the date of such estimate, and subsequent to the date of such petition or determination of the common council to make such improvement without petition, shall invalidate or affect any sale thereof in pursuance of this act. Upon the sale of any lot or land by virtue of such precept, and the payment of the purchase-money, the treasurer (or in case of his death or going out of office, his successor) shall execute, acknowledge and deliver to the purchaser a certificate of conveyance for the premises; which shall be valid and effectual to convey all the rights, title and interest of any such owner or purchaser from him as aforesaid, except as hereinafter provided, and shall be *prima facie* evidence of all the facts recited therein. In case the purchaser of any real estate under a precept, as aforesaid, having paid the purchase-money therefor, shall die before a certificate of conveyance, as herein provided, shall have been executed to him, the treasurer shall convey the same to the heirs or devisees of such deceased purchaser. The proceeds of any such sale shall be applied as follows, to wit:

Firstly. To the payment of such assessment, with interest there-

on from the date of such estimate, and all costs accrued thereon by reason of said sale; and,

Secondly. The residue of such proceeds shall be paid to the owner, or his or her heirs or representatives, of such real estate or, if unknown, it shall be paid into the city treasury; and such city shall at all times be responsible to such owner, heirs, or representatives for such residue. The purchaser under such precept shall hold such real estate subject to the lien of the unpaid part of its proportion of the whole cost of the improvement. The treasurer shall be entitled to a commission of five per cent. on the first hundred dollars, and three per cent. on any excess above that sum; but when the money is paid to him without sale, one-half commission only shall be received by him. For levying on the real estate and advertising the same, he shall receive one dollar; for personal demand for payment, twenty-five cents; for return of the precept, with his doings thereon, one dollar; for making certificate of sale on real estate, one dollar. He shall indorse on said precept the time of receiving the same, and, within three months thereafter, he shall make return thereof to the clerk, with his proceedings thereon. Any purchaser failing to pay the purchase-money shall be subject to the like penalties and proceedings as purchasers at sheriff's sale are by the laws of this State. The owner of any lot or land sold as aforesaid, or his agent or attorney, heirs or representatives, may redeem the same at any time within one year after the day of sale, by paying to the purchaser, or to the city treasurer for the use of the said purchaser, or his heirs or assigns, the sum mentioned in his certificate, and the amount of all subsequent assessments paid by the purchaser, with fifty per cent. on the whole sum, and interest from date of purchase or time of payment: *Provided*, That infants, idiots, insane persons, and *femmes covert*, may redeem any such lot or land belonging to them, sold for assessment, as aforesaid, within one year from expiration of such disability. Claimants of a part of such land, or of any individual part of the same, may redeem the whole as other owners may redeem. If such owner, or other person on his behalf, shall fail to redeem such land within one year, as aforesaid, at the expiration thereof, and on production of the certificate of purchase, the treasurer shall execute to the purchaser, his heirs or assigns, in the name of the city, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee-simple, subject, however, to all claims which the city may have thereon for assessments, or liens or other incumbrances. Such certificate and final conveyance shall resemble, as nearly as may be, the certificate and conveyance for tax sales, and be *prima facie* evidence of all the facts recited therein.

For a form of *affidavit* for a precept, an *order* for the *issuance* of a precept, a *precept*, *notice* of issuance of precept, *notice of sale* or precept, *certificate* of sale, *assignment* of certificate of sale, *deed*, *appeal bond*, and *transcript*, see § 3165.

Sec. 3292*k*. Not applicable to large cities. 4. The provisions of this act shall not apply to cities of 100,000 population, or more, according to the last preceding United States census.

ARTICLE 5*B*—PARKS.

SEC.		SEC.	
3292*l*.	Parks—Condemnation proceedings.	3292*t*.	Oath and Bond.
3292*m*.	Duties of commissioners.	3292*u*.	Donations, may accept.
3292*n*.	Tender.	3292*v*.	Park tax.
3292*o*.	Acceptance or refusal of assessment.	3292*w*.	Control of parks—Pay of commissioners.
3292*p*.	Rules and regulations for park.	3292*x*.	Accounts and receipts.
3292*q*.	Tax levy.	3292*y*.	Additional power of council.
3292*r*.	Laws repealed.		
3292*s*.	Board of park commissioners in cities.		

[1891, p. 116. Approved and in force, March 5, 1891.]

Sec. 3292*l*. Parks—Condemnation proceedings. 1. The common council of any city or board of trustees of any incorporated town which shall, by ordinance or resolution, decide to establish, locate, lay out or improve any public park, parks or grounds, or to make extension of such parks or grounds where they have heretofore been located, established, improved or commenced, shall have authority to locate such parks or public grounds, with all appendages, and lay out and open such roads, streets, avenues or drives as may be required for such improvement, and in case the use of any lands, town lots, water rights or easements, or of any pool, lake or natural stream of water, shall be found necessary for the establishment, location, maintenance and improvement of such parks or grounds, it shall be lawful for such common council or board of trustees, by themselves or agent, to enter upon and take possession of and condemn the same for these uses: *Provided*, That such lands, town lots, water rights, pools, lakes and natural streams of water shall not be used for any other purpose than for such public parks or public grounds. For the purpose of such condemnation and use such common council or board of trustees shall have jurisdiction for five miles beyond the limits of such city or town: *Provided further*, That before such common council or board of trustees shall proceed to take possession of such lands, lots, water rights, easements, pools, lakes and natural streams of water for the purpose above mentioned, they shall apply to the judge of the circuit court to appoint three commissioners, residents of such city or town, who shall be disinterested free holders, to appraise and assess the damages accruing to the owners of any lands, lots, water rights, easements, pools, lakes and natural streams of water so taken and condemned for said public purpose. And said commissioners shall, before they proceed to perform their duties as appraisers, take and subscribe an oath or affirmation faithfully to perform all their duties as such appraisers, which shall be indorsed upon or attached to their appointment, and file

the same with the clerk of such city or town. Ten days' notice shall be given such commissioners by said council or board of trustees, through the city or town clerk, of the appraisement to be made, giving a complete description of the premises to be viewed. A like notice shall be given by personal service, or by leaving the same with some person of suitable age at their place of abode, to each of the owners or agents thereof of lands, lots, water rights, easements, pools, lakes or natural streams to be so taken for such public parks or grounds, as in civil cases. If the owners are unknown or non-residents of this State, publication of the same in one or more newspapers of the town of general circulation, or by posting up written or printed notices in six public places in such city or town, if there be no newspaper published therein, for three weeks, shall be deemed equivalent to such personal service.

1. A description of each tract of land, with the name of the owner, should be set out in the resolution; and also in the notice to the commissioners, in their appointment, in the notice to the owner thereof, and in the report of the commissioners.

2. Parks in cities, see § 3106, clauses 28, 45 and 46.

Resolution.

Resolved, by the common council of the city of ———, That the following described real estate, situated in said city, county of ———, and State of Indiana, should be condemned and appropriated by the said city for the use and purposes of a public park, to wit: All that parcel and lot of ground bounded by Grant, Main, Pike and Walnut streets, and owned by U. Z.; and the judge of the ——— circuit court is hereby requested to appoint three residents of this city who are disinterested freeholders as commissioners to appraise and assess the damages that will accrue to the owners of said lot or parcel of ground by reason of the appropriation of said real estate.

Appointment of Commissioners.

At the request of the common council of the city of ———, State of Indiana, I hereby appoint A. B., C. D., and E. F. as three commissioners to appraise the damages accruing to U. Z. by reason of the condemnation of his land, to wit: That lot or parcel of ground bounded by Grant, Main, Pike and Walnut streets of said city, for the purposes of a public park.

Dated ———, 18.—

R. M.,
Judge of the —— Circuit Court.

[It is not necessary that a record be made of this appointment by the clerk of the circuit court. It must be filed with the city clerk and by him preserved.]

Notice to Commissioners of their Appointment.

To A. B., C. D., and E. F:

You are hereby notified that on the ——— day of ———, 18—, the judge of the ——— circuit court, State of Indiana, appointed you as three commissioners to appraise and assess the damages accruing to the owners of that lot or parcel of ground bounded by Grant, Main, Pike and Walnut streets, of the city of ———, State of Indiana, by reason of the condemnation and appropriation

thereof by the council of said city for the purpose of a public park. Said land is owned by U. Z. You will meet at 10 a. m. on the ——— day of ———, 18—, at room four in the city hall, for said purpose.

In testimony whereof, I have hereunto set my hand and the seal of said city this ——— day of ———, 18—.

[City Seal.]

L. X.,
Clerk of the City of ———.

Marshal's Return of Service.

This is to certify that I served the annexed notice upon the within named A. B., C. D., and E. F., by giving to them a certified copy thereof on the ——— day of ———, 18—.

R. U.,
City Marshal.

Certificate of Commissioners' Appointment.

This is to certify that on the ——— day of ———, 18—, A. B., C. D., and E. F. were appointed by the judge of the ——— circuit court, at the request of the common council of the city of ———, State of Indiana, as three commissioners to appraise and assess the damages accruing to U. Z., the owner of all that tract of land bounded by Grant, Main, Pike, and Walnut streets of said city, in the county of———, and State of Indiana, which tract, at said meeting, it was resolved by said common council to condemn and appropriate for the uses and purposes of a public park. You are therefore empowered, commanded, and required to make said appraisement and assessment, and to make due return thereof to said common council; and for that purpose will meet in room 4 in the city hall at 10 a. m. on the ——— day of ———, 18—.

In testimony whereof, I have hereunto set my hand and the seal of said city this ——— day of ———, 18—.

[City Seal.]

L. X.,
Clerk of the City of ———.

Oath.

State of Indiana, County of ———, *ss:*

We, A. B., C. D., and E. F., each do severally and solemnly swear that we will faithfully perform all our duties as appraisers of the land described in the annexed appointment and will faithfully perform our duties as such commissioners. So help us God.

A. B.,
C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Notary Seal.]

T. L.,
Notary Public.

Notice to Land-Owner.

Notice is hereby given to U. Z. that on the ——— day of ———, 18—, the common council of the city of ———, county of ———, and State of Indiana, by resolution duly adopted, resolved to condemn and appropriate for the uses of a public park the following real estate situated in said city, owned by you, to wit: All that tract or parcel of land bounded by Grant, Main, Pike, and Walnut streets of said city. And also appointed A. B., C. D., and E. F., three residents of said city and disinterested freeholders thereof, as commissioners to appraise and assess the damages accruing to you as owner of said tract or parcel of land to be so taken and condemned for said public purpose. Said commissioners will meet at room 4 of the city hall of said city, at 10 a. m. on the ——— day of ———, 18—, for the purposes of making said assessment and appraisement, of which meeting you will take due notice.

In testimony whereof, I have hereunto set my hand and the seal of said city this ——— day of ———, 18—.

[City Seal.]

L. X.,
Clerk of the City of ———.

Marshal's Return.

Served the within notice on the within named U. Z. by giving him a certified copy thereof on the ——— day of ———, 18—.

R. U.,
City Marshal.

[The above notice may be published for non-residents, and then the usual affidavit of publication should be filed with the city clerk.]

Sec. 3292*m*. Duties of commissioners. 2. Such commissioners, or a majority of them, shall, at the place and time indicated in such notice, proceed to an examination of such lands, lots, water rights, easements, pools, lakes and natural streams so desired to be taken or condemned for the use of such public parks or grounds, and shall then and there estimate the damages accruing to the owner. They shall view the premises and receive any evidence touching the questions before them, and may, for that purpose, administer oaths to witnesses examined in relation thereto. They shall make a report in writing of the amount of damage, if any, accruing to each owner, and within ten days thereafter file the same with the clerk of such city or town.

The oath to a witness may be administered orally.

Oath for Witness.

You do solemnly swear that you will well and truly answer such questions as may be asked you in relation to the condemnation of certain lands for the uses and purposes of a public park within the city of ———, and State of Indiana. So help you God.

Sec. 3292*n*. Tender. 3. When such report is filed, as in the preceding section required, the common council or board of trustees, if they accept the assessment so made, shall tender, or cause to be tendered, to the owner of such lands, lots, water rights, easements, pools, lakes, or natural streams, or their heirs or representatives, the damages awarded by such commissioners, or if not found within the city or town, or the award is not accepted, then the same shall be kept by the treasurer as a special deposit, subject to the order of such owner or his heirs or representatives.

Commissioners' Report.

To the Common Council of the City of ———:

We, A. B., C. D., and E. F., three commissioners appointed by you on the ——— day of ———, 18—, to appraise and assess the damages accruing to U. Z., the owner of all that tract of land bounded by Grant, Main, Pike and Walnut streets of said city, county of ———, and State of Indiana, that may be occasioned by the condemnation and appropriation of the same for a public park, respectfully report that they met at room four of the city hall of said city at 10 a. m. on the ——— day of ———, 18—, pursuant to the notice of the clerk of said city, and having previously taken the oath required of them by statute,

proceeded in the presence of said U. Z. to examine said tract of land, and after hearing such evidence as was offered by said U. Z. and such other as they desired to hear, touching the questions before them, and we did then and there estimate the damages accruing to said U. Z. at ——— dollars and ——— cents, which we return as the true amount of damages that will be due him by reason of said condemnation and appropriation.

A. B.,
C. D.,
E. F.,
Commissioners.

Sec. 3292o. Acceptance or refusal of assessment. 4. The common council or board of trustees shall within twenty days from the filing of said report, either accept or reject the terms of the same in whole or in part, and all parties aggrieved by such report may appeal therefrom, at any time within thirty days after the filing thereof, to the circuit court of the county, upon filing the usual bond with the clerk of such city or town for the payment of costs, but no such appeal shall prevent any such city or town from proceeding with said appropriation, construction and improvement, as if no appeal had been taken. No other question shall be determined than the regularity of the proceedings in the suit, and the amount of damages sustained.

1. The appeal bond should accompany the transcript, and need not be set out at length in it.

2. The report can be referred back to the commissioners for correction of errors; but they can not change the damages as assessed, nor can the council require them to do it. If the report is rejected, other proceedings may be at once instituted for the same purpose.

Acceptance of Report and Condemnation.

Resolved, that the report of A. B., C. D., and E. F., three commissioners appointed by this council on the ——— day of ———, 18—, to assess and appraise the damages accruing to U. Z., by reason of the proposed condemnation and appropriation of all that tract of land bounded by Grant, Main, Pike and Walnut streets of this said city, county of ———, and State of Indiana, be and the same is hereby fully accepted; and the tract of land above described is hereby condemned and appropriated by this city, by virtue of the statute in such cases made and provided, for the uses and purposes as a public park for said city forever, as fully as if the said city was the owner in fee-simple thereof and devoted the same to that use and purpose; and the treasurer is hereby ordered to tender to said U. Z. the amount of damages assessed in his favor, by said commissioners, to wit: $———; and for that purpose said amount is hereby appropriated out of the general funds of said city not otherwise appropriated.

Appeal Bond.

We, U. Z., R. S. and L. V., are bound unto the city of ———, State of Indiana, in the penal sum of ——— dollars, which we severally bind ourselves well and truly to pay.

The condition of this obligation is, that whereas the said U. Z. has appealed to the ——— circuit court from the proceedings of said city condemning and appropriating for the uses and purposes of a public park thereof all that tract or parcel of land bounded by Grant, Main, Pike and Walnut streets of said city, which condemnation and appropriation was made on the ——— day of

———, 18—. Now if the said U. Z. shall prosecute his said appeal to a final judgment and pay all costs that may be adjudged against him, then this bond shall be null and void, otherwise in full force and effect.

Witness our hands and seals this ——— day of ———, 18—.

U. Z., [Seal.]
R. S., [Seal.]
L. V. [Seal.]

Approved:

L. X.,
Clerk of the City of ———.

Transcript.

Be it remembered that on the ——— day of ———, 18—, at a regular meeting of the common council of the city of ———, State of Indiana, the following proceedings were had and held by said council as shown by the records and papers of said council, on file in the office of the clerk of said city, viz.:

[*Set out the resolution and journal entry of the appointment of the commissioners.*]

Thereupon, the following notice to said commissioners was issued by the clerk of said city and served by the marshal thereof, viz.:

[*Set out the notice and marshal's return.*]

And, thereupon, the following appointment was issued to said commissioners, who accepted the same and took and subscribed the oath thereto attached, viz.:

[*Set out the appointment and oath.*]

And, thereupon, the following notice was issued and served, as shown by the return of the marshal, attached thereto, viz.:

[*Set out the notice to land-owners and the marshal's return attached thereto.*]

And, be it further remembered that on the ——— day of ———, 18—, said commissioners filed with the clerk of said city the following report, viz.:

[*Set out the commissioners' report.*]

And, be it further remembered that on the ——— day of ———, 18—, at a regular meeting thereof, the following further proceedings were had and held by said council, and duly entered of record, viz.:

[*Set out the resolution of acceptance.*]

Be it also further remembered that on the ——— day of ———, 18—, the said U. Z. filed his appeal bond, with R. S. and L. V. as sureties, with the clerk of said city, praying an appeal to the ——— circuit court.

In testimony whereof, I have hereunto set my hand and seal of said city this ——— day of ———, 18—.

[City Seal.]

L. X.,
Clerk of the City of ———.

Sec. 3292*p*. Rules and regulations for parks. 5. The common council of any city or board of trustees of any town which may have established, located or laid out any public park or grounds under the provisions of this act is hereby authorized and empowered to pass such ordinances, rules and regulations with regard to the laying out, improvement, preservation and ornamenting and management of such parks and public grounds as they may deem necessary for that purpose.

Sec. 3292*q*. Tax levy. 6. The common council [or board of trustees] of such cities [or towns] shall have the power to levy a tax not exceeding one cent on each one hundred dollars of property to defray the expenses of purchasing said park or parks.

Sec. 3292*r*. Laws repealed. 7. All laws or parts of laws in conflict with the provisions of this act are hereby repealed.

[1891, p. 479. Became a law by lapse of time without the Governor's signature, March 10, 1891. Took effect June 3, 1891.

Sec. 3292*s*. Board of park commissioners in cities. 1. The common council of any incorporated city of this State of a population of over ten thousand and under one hundred thousand inhabitants shall be and are hereby authorized and empowered at its first regular meeting in June of any year after the passage of this act to select three park commissioners, who shall constitute and be designated a board of park commissioners, and who shall hold their office for one, two and three years respectively (as said commissioners shall determine by lot at the time of their organization), and that annually thereafter said common council shall elect one park commissioner, who shall hold his office for three years, or until his successor is elected and qualified.

Election.

Resolved, that A. B. is hereby elected a park commissioner of this city for the term of three years from and after this date.

Notice of Election.

To A. B.:

You are hereby notified that at a regular meeting of the common council of the city of ———, of the State of Indiana, held on the ——— day of ———, 18—, you were elected a park commissioner of said city for the term of three years from said date.

In testimony whereof, I have hereunto set my hand and the seal of said city this ——— day of ———, 18—.

[Corporate Seal.]

X. L.,
Clerk of the City of ———.

Sec. 3292*t*. Oath and bond. 2. Before entering upon the duties of their office, said park commissioners shall take an oath of office faithfully to perform the duties of the same. They shall meet within five days after their election and organize by electing a president, secretary and treasurer. The treasurer shall give bond, with at least two sufficient freehold sureties, in a sum not less than double the amount that may come into his hands in any one year by virtue of his office, to be fixed and approved by the finance committee of the common council. The president and secretary shall each give bond with like sureties in a sum to be fixed by the finance committee, and all of said bonds shall be approved by the common council of said city.

Bond.

Know all men by these presents that A. B., C. D., and E. F. are held and firmly bound unto the city of ———, State of Indiana, in the penal sum of ——— dollars.

The condition of the above bond is that, Whereas A. B. was elected a park commissioner on the ——— day of ———, 18—, for the term of three years from said date, for said city, by the common council thereof; and that whereas said

park commissioners have met, organized and selected said A. B. as their treasurer. Now if the said A. B. shall well and truly account for and pay over to the proper authorities all moneys, bonds, or property, that may come to his hands as such treasurer, then this bond shall be void, else in full force.

Dated this ——— day of ———, 18—.

A. B., [Seal.]
C. D., [Seal.]
E. F., [Seal.]

Oath.

State of Indiana, ——— *County*, *ss:*

I, A. B., solemnly swear that I will faithfully perform the duties of park commissioner of the city of ———, of said county and State. So help me God.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Seal.]

L. T.,
Notary Public.

[This oath should be indorsed on his bond, filed by the commissioner taking the oath.]

Sec. 3292*u*. Donations, may accept. 3. Such board of park commissioners shall be and is hereby authorized and empowered to accept and receive any bequests, donations or other gifts, of money or property made or given for the benefit of any public park under the supervision or control of the board, and to invest or apply the same in the manner designated by the donor: *Provided*, That the board are of the opinion that such bequest, donation or gift would be beneficial to said park.

Sec. 3292*v*. Park tax. 4. The common council of any such city shall have power to annually assess and collect as other city taxes are assessed and collected, a special park tax to be fixed by the common council not exceeding five cents on each one hundred dollars of taxable property real and personal within the city, which special park tax shall be paid to the treasurer of said board upon the warrant of the president, countersigned by the secretary thereof; and such tax shall be applied exclusively to the maintenance and improvement of the public parks of the city under the control and supervision of the board.

Sec. 3292*w*. Control of parks—Pay of commissioners. 5. The park commissioners shall have charge of all parks belonging to the city and open to the use of the general public, together with the approaches thereto. They shall employ competent help, have power to make and enforce police regulations within and about the parks, and shall have care, management and improvement of all said park property of the city and all personal property used therein or connected therewith. Such park commissioners shall receive for their services such compensation as the common council of the city may deem just, which compensation shall be paid from the special park fund.

Sec. 3292*x*. Accounts and receipts. 6. Such park board shall keep an accurate account of their receipts and expenditures of such revenues, and shall render to the common council annually, on the first Monday in January (and oftener if required by such common council), a report in writing of such receipts and expenditures and their doings as such board. And for any failure of any of said park commissioners to faithfully discharge his duty or properly account for or deliver over to his successor any of the money or property in his possession, such park commissioner shall be liable on his bond.

Report of Park Commissioners.

To the Common Council of the City of ———:

The undersigned, park commissioners of said city, hereby submit their report for the year ending on the first Monday in January, 18—:

Amount on hand at last report . . . . . $ ———
Amount received from taxes since last report . . . . . ———
Amount received from donations since last report . . . . . ———
Amount received by sale of ——— since last report . . . . . ———
Total amount received . . . . . $ ———

They are entitled to the following credits, viz.:

To whom Paid.	No. Voucher.	When Paid.	For what Paid.

Total amount paid out . . . . . $ ———
Total amount on hand . . . . . ———

All of which is respectfully submitted.

Dated ———, 18—.

A. B.,
C. D.,
E. F.,
Park Commissioners.

Sec. 3292*y*. Additional power of council. 7. The common council may make any further regulation for the government of said board and the furtherance of the purpose of this act not inconsistent therewith.

CHAPTER XXIII.

CORPORATIONS—TOWNS.

ART.

1. *Incorporation and Organization.*
2. *Government and Powers.*
3. *Taxation.*
4. *Improvement of Streets.*
5. *Openings and Vacations.*
6. *Annexation of Territory.*
7. *Sewers.*

ARTICLE 1—INCORPORATION AND ORGANIZATION.

SEC.

3293. Survey and map.
3294. Census.
3295. Survey, map, and census made public.
3296. Application to county board.
3297. Hearing and order.
3298. Notice to voters.
3299. Polls, how long open.
3300. Board of election.
3301. Election, and effect thereof.
3302. Districts.
3303. Re-districting.
3304. Notice of corporation election.
3305. Annual election.
3305*a*. Voting place.
3305*b*. Laws repealed.
3306. Polls — Opening and closing.
3307. Inspector's duties.
3308. Officers to be elected.
3309. Who elected — Tie — Certificate.
3310. Clerk's duty.
3311. Trustees, how elected — Term.
3312. Vacancies.
3313. President — Oath.
3314. Corporate name.
3315. Order of incorporation, when conclusive.
3316. How old town may incorporate.
3317. Debts not affected.
3318. Dissolution of town — Proceedings.
3319. Rights and contracts not affected.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

SEC. 3293. Survey and map. 1. Persons intending to make application for the incorporation of a town, as hereinafter provided, shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such town. Such survey shall be made by a practical surveyor, and shall show the courses and distances of the boundaries thereof, and the quantity of land contained therein — the accuracy of which survey and map shall be verified by the affidavit of such surveyor, written thereon or annexed thereto.

NECESSARY STEPS TO INCORPORATE A TOWN.

The following steps are essential to the incorporation of a town:

1. *Survey and map.* There must be a survey and map made by a practical surveyor, the accuracy of which must be attested by his affidavit, § 3293.

2. *Census.* A census of the number of heads of families and inhabitants, resident in the town thirty days previous to applying for the incorporation, must be taken (3294), and its correctness verified by affidavit, § 3295.

3. *Posting survey and census.* The survey, map, and census must be left at a convenient place within the town, for examination at a public place in the

town, for at least twenty days before application to the board of county commissioners, § 3295.

4. *Petition.* The persons asking the incorporation must present a petition to the board of county commissioners, subscribed by at least one-third of the town voters, setting forth the boundaries, the number of acres and the resident population, verified by affidavit, § 3296.

5. *Notice.* Notice of the intention to make the application must be given, and the petition presented at the time therein specified, § 3296, *note* 2.

6. *Order for an election.* After proof that all the steps mentioned have been taken, the board orders an election to decide the question of incorporation, names the proposed town, and sets a day, and designates the place for the election, § 3297.

7. *Election notice.* The county board gives ten days' notice of the election by publication in newspaper, and by posting up ten copies of such notice in the town, § 3298.

8. *Election.* The election is conducted under the general election law, § 4710*m*, the polls opening at 8 a. m. and closing at 6 p. m., § 4698. There is but one polling place, § 3299. The voters first choose three inspectors, one of whom acts as a clerk, § 3300. The ballot is "yes" or "no." The election board makes out a sworn statement of the result and files it with the county auditor, who lays it before the county board, § 3301.

9. *Order of incorporation.* If there be a majority in favor of the incorporation, the board makes an entry in its record to that effect, and declares the town incorporated. The order is conclusive of the fact of incorporation, § 3301 and § 3315.

10. *Wards.* The election inspectors then divide the town into wards, from three to seven, § 3302.

11. *Election notice.* They give ten days' notice of a town election, specifying the day, not exceeding twenty days from the date of posting the notices, § 3304.

12. *Election.* The election is held according to the general election law, § 4710*m*, a poll being opened in each ward, § 3305*a*, *note* 2, from 8 a. m. to 6 p. m., § 4698; § 3306, *note.* The inspectors for the incorporation election preside, § 3307, and declare the result, certifying to the result and filing the statement with the county clerk within ten days thereafter, § 3309. The entire town votes for all the trustees to be elected, and such trustees may be all elected from a single ward, § 3311, *note* 1.

13. *Officers elected.* The officers elected are one trustee for each ward or district, a clerk, treasurer, § 3308, and marshal, § 3325.

14. *Record of election.* The county clerk makes a record of the election, § 3310, and issues certificates of election to those elected. These certificates should be issued within five days after the election, so those elected can take the oath of office, § 3313.

15. *Meeting of board.* As soon as the statement of the result of the election is filed with the county clerk, and the trustees have received their certificates, they, or a majority of them, mutually meet and elect a president.

NOTES.

1. See notes to § 3031. That towns must be created by *general law* see § 212, *notes.* Towns incorporated under *special act* previous to the adoption of the constitution were continued under their special charters, and such charters may be amended, § 235, *notes*, Clarksville, see § 235, *note;* § 3031, *note* 6.

2. That this act is *constitutional*, see § 3031, *note* 2. Effect of *amendment* of general law, § 3031, *note* 5. Non-liability for *legislative acts*, § 3031, *note* 3. That a town can not be deprived of its powers of *local self-government*, see § 3043, *notes* 2 *and* 3.

3. A town is *not* always a *city;* but a city is always a town, 55 Ind. 535; for town is a *generic term*, and comprehends cities, 24 Ind. 286.

4. In an action against a town, the contrary not appearing, it will be *presumed* that it was incorporated *under the general law* of the State, 55 Ind. 14; 60 Ind. 327; 57 Ind. 192; 55 Ind. 210. See § 3031, *note* 1.

5. The *inhabitants*, and not the officers, constitute the *incorporation;* and although such officers may have violated their duty, they may invoke the aid of the courts to protect the rights of the town, 114 Ind. 332; § 3036, *note* 4.

6. A *part of a town* can not organize itself into a *separate* town, 61 Ind. 97 (overruling 50 Ind. 535); 47 Ind. 274.

7. Courts will not take *judicial notice* of the exact location or territorial limits of a town, 76 Ind. 549; 28 Ind. 429; 65 Ind. 492.

8. The *validity* of the *survey* and *map* can not be collaterally attacked after the incorporation; especially if the town has exercised corporate powers over a well-defined territory, with knowledge of the public, for a long time,—as for twenty years, 82 Ind. 493.

9. An act of 1861 legalized the incorporation of all towns made under the act of June 11, 1852, and before May 6, 1853, special acts 1861, p. 47; also in 1859, acts 1859, p. 206.

10. Special acts have been passed legalizing the following towns, viz.: Alamo (Acts 1889, p. 13); Ambia (Acts 1885, p. 8); Angola (Acts 1883, p. 100); Argos (Acts 1881, p. 707); Auburn (Sp. Acts 1879, p. 204); Bedford (Acts 1889, p. 202); Bloomington (Sp. Acts 1877, p. 23); Boswell (Acts 1887, p. 5); Bourbon (Acts 1889, p. 41); Bunker Hill (Acts 1887, p. 28); Burnettsville (Acts 1883, p. 138); Butler (Acts 1879, p. 206); Cadiz (Acts 1883, p. 31); Cannelton (Acts 1885, p. 7); Carbon (Acts 1883, p. 112); Carmel (Acts 1889, p. 374); Carpentersville (Acts 1891, p. 31); Center Point (Acts 1889, p. 344); Chesterton (Acts 1875, p. 155); Cherubusco (Acts 1883, p. 82); Clifford (Acts 1891, p. 26); Darlington (Acts 1883, p. 138); Elliottsville (Acts 1889, p. 303); Fairland (Acts 1877, p. 151); Fisher's Station (Acts 1891, p. 50); Fowler (Acts 1891, p. 9); Geneva (Acts 1881, p. 706); Greenville (Acts 1891, p. 27); Hammond (Acts 1891, p. 5); Huntington (Sp. Acts 1879, p. 217); Huntsville (Acts 1889, p. 347); Jasper (Sp. Acts 1879, p. 220); Kentland (Acts 1873, p. 161); Laconia (Acts 1885, p. 175); Lagro (Acts 1881, p. 710); Loogootee (Sp. Acts 1877, p. 151); Macy (Acts 1891, p. 338); Martinsville (Acts 1875, p. 157); Middlebury (Acts 1887, p. 7); Mishawaka (Acts 1857, p. 126); Mooresville (Acts 1873, p. 171); New Castle (Acts 1881, p. 47); New Haven (Acts 1885, p. 12); New Maysville (Acts 1891, p. 334); Noblesville (Acts 1877, p. 151); North Vernon (Sp. Acts 1875, p. 63); Oakland (Acts 1883, p. 111); Orleans (Acts 1887, p. 38); Osgood (Acts 1891, p. 25); Owensville (Acts 1885, p. 150); Patoka (Acts 1891, p. 4); Pierceton (Acts 1887, p. 38); Pine Village (Acts 1891, p. 11); Portland (Acts 1875, p. 158); Poseyville (Acts 1889, p. 83); Redkey (Acts 1889, p. 7); Ridgeview (Sp. Acts 1877, p. 78); Roachdale (Acts 1883, p. 145; Acts 1889, p. 219); Russellville (Acts 1889, p. 347); Saltilloville (Acts 1891, p. 330); Scottsburgh (Acts 1891, p. 303); Sheridan (Acts 1889, p. 6); Shoals (Acts 1877, p. 152); Silver Lake (Acts 1883, p. 34); Syracuse (Acts 1883, p. 12); Tipton (Acts 1875, p. 159); Walton (Sp. Acts 1879, p. 224); Warren (Acts 1889, p. 287); Washington (Acts 1885, p. 128); Waterloo (Acts 1877, p. 153); Waynetown (Acts 1883, p. 81); Westport (Acts 1891, p. 12).

Survey and Oath.

I hereby certify that I have made a survey of the proposed town of ———, which is as follows, to wit: Beginning at, etc., containing ——— acres. I also certify that the accompanying map hereto attached is a correct map of said proposed town.

A. B.

State of Indiana, County of ———, *ss.*

A. B., upon his oath says that he is a practical surveyor and that the above and foregoing statement is true, and that said map is an accurate map of said proposed town of ———.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Seal.]
C. D.,
Notary Public.

Sec. 3294. Census. 2. Such persons shall cause an accurate census to be taken of the resident population of such territory, as it may be, on some day not more than thirty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day, and the number of persons then belonging to every such family; and it shall be verified by the affidavit of the person taking the same.

Census Roll.

A census of the resident population embraced within the following territory, situate within the county of ———, State of Indiana, to wit: [*Give the boundaries as established by the survey*], containing ——— acres, taken by the undersigned on the ——— day of ———, 18—.

Heads of Families.	Number of each Family.	No. of Voters.

Total number of heads of families . . . . . ———
Total number of resident population . . . . . ———
Total number of voters . . . . . ———

A. B.

State of Indiana, County of ———, *ss:*

A. B. being duly sworn, upon his oath says that the above and foregoing contains a correct census of the heads of families, the resident population, and legal voters of the territory therein described, taken by him upon said ——— day of ———, 18—.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Seal.]
L. X.,
Notary Public.

[1855, p. 126. Approved and in force February 23, 1855.]

Sec. 3295. Survey, map, and census made public. 3. Such survey, map, and census, when completed and verified as aforesaid, shall be left at some convenient place within said territory, for examination by those having interest in said application, for a period of not less than twenty days.

This section seems to require the affidavit of more than one person.

Affidavit.

State of Indiana, County of ———, *ss:*

A. B. and C. D., upon their oaths, say that the survey and map, duly verified, to which this affidavit is attached, was left on the ——— day of ———, 18—, at the ——— post-office, a public and convenient place within the territory therein described; and that the same remained there until the ——— day of ———, 18—, subject to the examination and inspection of any one desiring to inspect or examine them.

A. B.,
C. D.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Seal.]
L. X.,
Notary Public.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3296. Application to county board. 4. Such application shall be by petition, subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and said petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained, according to said census taken; and the said petition shall have attached thereto, or written thereupon, affidavits verifying the facts alleged therein; and it shall be presented at the time indicated in the notice of such application, or as soon thereafter as the board can receive and consider the same.

1. Who are "qualified voters," see §§ 84 and 3223.

2. This section evidently requires some notice to be given of the time when application will be made to the board of county commissioners; yet there is no other provision touching the subject. A form is given below, which should be, perhaps, posted as required under § 3232.

Notice.

To Whom it May Concern:

Notice is hereby given that the undersigned will present a petition to the board of commissioners of the county of ———, State of Indiana, on the ——— day of ———, 18—, praying that the following territory within said county be incorporated as a town, to wit: [*Describe the territory.*]

A. B.,
C. D.

Affidavit of Posting.

State of Indiana, County of ———, *ss:*

A. B. being duly sworn, upon his oath says that the annexed notice was posted up in three of the most public places within the territory described in said notice, to wit: [*Name the places where posted.*] Said notice was posted up at all of said places on the ——— day of ———, 18—, by the undersigned.

A. B.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Seal.]
L. X.,
Notary Public.

Petition.

To the Board of Commissioners of the County of ———:

The undersigned represent to your honorable body that they constitute at least one-third of the voters of the following described territory, situate within said county of ———, State of Indiana, to wit: [*Describe the territory by metes and bounds*], containing ——— acres; that the resident population of said territory, according to a census thereof taken on the ——— day of ———, 18—, is ———. They pray that your honorable board will order an election for the purpose of incorporating said territory as a town under the laws of the State of Indiana, to be known as "The Town of ———."

A. B.,
C. D., etc.

State of Indiana, County of ———, *ss:*

A. B. and C. D., upon their oaths, say that the facts set forth in the petition to which this is annexed are true, and that the persons whose names are thereto attached personally signed the same.

A. B.,
C. D.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Seal.]

L. X.,
Notary Public.

Sec. 3297. Hearing and order. 5. The board of county commissioners, in hearing such application, shall first require proof, either by affidavit or by oral examination of witnesses before them, that the said survey, map, and census were subject to examination in the manner and for the period required by section three of this act [§ 3295]; and if said board be satisfied that the requirements of this act have been fully complied with, they shall then make an order, declaring that such territory shall, with the assent of the qualified voters thereof, as hereinafter provided, be an incorporated town, by the name specified in the application aforesaid, which name shall differ from that of every other town in this State; and they shall also include in such order a notice for a meeting of the qualified voters resident in said territory, at a convenient place therein, to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated town.

1. For proof of depositing the map and census in a public place, see § 3295; of notice and affidavit of posting, see § 3296. These affidavits are sufficient proofs when accompanied by the survey and map, with the affidavit thereto attached (§ 3293); and none other need be presented.

2. The filing of the petition gives the board of county commissioners *jurisdiction* over the territory described in it and the survey; and such board can not be deprived of its jurisdiction by an adjoining city or town assuming to annex such territory. In such an instance an injunction will lie at the suit of any of the petitioners to enjoin such city or town from annexing the territory, 47 Ind. 274.

3. If the board is satisfied that the requirements of the statute have been complied with, they must make the order; they have *no discretion* in the matter, 47 Ind. 274; 76 Ind. p. 557; 78 Ill. 382.

4. If the *territory* described in the petition *embraces* any part of an incorporated *town* or *city* the order can not be made; the proposed town can not be incorporated, 47 Ind. 274; 61 Ind. 97 (overruling 50 Ind. 535).

5. The board of commissioners act in a *judicial* and not merely in an administrative or legislative *capacity;* and an *appeal* lies from its decision, at least from a decision dismissing a petition, 76 Ind. 549 (overruling 73 Ind. 213); § 3243.

6. The board on the hearing can not take judicial notice of its own orders or judgments in a different case on the same subject, 76 Ind. 549.

7. Courts take judicial notice of the incorporation of a town; proof of that fact is unnecessary, 90 Ind. p. 551.

Order-Book Entry.

Whereas, A. B. and others, qualified voters, residing within the following described territory, situate within the county of ———, and State of Indiana, to wit: [*Describe the territory*], containing ——— acres, have petitioned this board that said territory be incorporated as a town by the name of "The Town of ———," under the laws of this State; and

Whereas, said petition has been signed by at least one-third of the whole number of the qualified voters of said territory; and

Whereas, there has been filed with this board an accurate survey and map, the accuracy of which has been duly verified, of said territory; and

Whereas, said survey and map was left at a public and convenient place, to wit: at the ——— post-office, within said territory, subject to the examination of any person desiring to examine them, for a period not less than twenty days before the first day of the present term of this board; and

Whereas, a census of the resident population of said territory was taken showing that there was residing therein on the ——— day of ———, 18—, ——— heads of families, having a population of ———, of which ——— were qualified voters; and

Whereas, due notice of the intention to present said petition has been given by the petitioners for ——— days by posting up written notices thereof in at least three of the most public places within said territory; and

Whereas, this board is fully satisfied that all the requirements of the laws of the State of Indiana for the incorporation of towns have been fully complied with by said petitioners; therefore

It is hereby ordered, that said territory be incorporated as a town, to be known as "The Town of ———," if the qualified voters thereof assent thereto; and it is further ordered that an election be held at the ——— post-office, within said territory, between the hours of 8 a. m. and 6 p. m., on the ——— day of ———, 18—, of the qualified voters thereof, for the purpose of determining whether said territory shall be incorporated as a town, notice of which election shall be given by the county auditor by ten days' publication in the *Daily Argus* of this county.

Sec. 3298. Notice to voters. 6. The board shall give ten days' notice of such meeting by publication in a newspaper, if one be printed in such territory, and by posting up copies of said notice, not less than ten in number, at the most public places in said proposed incorporated town.

Election Notice.

Notice is hereby given that an election will be held at ——— post-office within the following described territory, situate within the county of ———, and State of Indiana, by the qualified voters thereof, to wit: [*Describe it*], between the hours of 8 a. m. and 6 p. m. on the ——— day of ———, 18—, for the purpose of determining whether said territory shall be incorporated as a town under the laws of the State of Indiana.

By order of the board of commissioners of the county of ———.

[Seal.] L. U.,

Auditor of the County of ———.

Sec. 3299. Polls, how long open. 7. At the meeting of the qualified voters, as herein provided, polls shall be opened at nine o'clock in the forenoon of such day, and shall be kept open until four o'clock in the afternoon, when they shall be closed.

The time for the opening of the polls is qualified by the election law of 1889, § 4698. There is only one voting place.

Sec. 3300. Board of election. 8. The voters at such meeting shall first proceed to the election of three inspectors, who, after being duly chosen and qualified, and having elected one of their number clerk, shall, without delay, proclaim to the meeting that the poll is now opened, and that they are ready to receive the ballots of the voters.

This section is not modified by the election law of 1889, and is in full force. The usual oath should be administered in writing.

Oath.

I, A. B., do solemnly swear that I will faithfully serve as inspector of the election held this day for the purpose of incorporating the proposed town of ———, situate within the county of ———, and State of Indiana. So help me God.

A. B.

Sec. 3301. Election, and effect thereof. 9. The qualified voters of said territory shall vote by ballots having thereon the word "Yes" or the word "No." And if a majority of the ballots given at such meeting shall have thereon the word "No," the voters of such territory shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but if a majority of such ballots shall have thereon the word "Yes," such territory shall, from that time, be deemed an incorporated town, to have continuance thereafter by the name and style specified in the order made by the board of county commissioners, as hereinbefore provided. And the inspectors of such meeting shall make a statement showing the whole number of ballots given at such meeting, the number having the word "Yes" thereon, and the number having the word "No" thereon; which statement shall be verified by the affidavit of such inspectors, and shall be returned to such board of commissioners, at their next session; who, if satisfied of the legality of such election, shall make an order declaring that said town has been incorporated by the name adopted; which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of said corporation, by the name and style aforesaid, shall thereafter be judicially taken notice of in all courts and places in this State, without specially pleading or alleging the same.

1. See notes to §§ 3035 and 3036. So far as applicable, the election law of 1889 applies; but that law is inapplicable to the printing of ballots or the use

of an official ballot. There is no officer authorized to print the ballots used at this election. *Election expenses* are paid by the newly incorporated town; if the proposed incorporation does not carry, there seems to be no provision authorizing their payment by the board of county commissioners or township trustee.

2. Courts take *judicial knowledge* of the incorporation of towns, and proof thereof is not necessary, 90 Ind. 545. The order of incorporation can not be *collaterally attacked;* it is conclusive, 47 Ind. 274; 76 Ind. 549; 82 Ind. 493; 89 Ind. 249. See § 3315.

3. The town is *not incorporated* "in a proper sense, until its officers and its board of trustees shall have been elected and a president of the board designated." And this is true even though an election has been held, no return of the result being made, and no order of incorporation being entered. In such an instance the township trustee may purchase a lot and build a *school-house* within the territory that it was attempted to incorporate, 38 Ind. 41.

4. After election and qualification, the town school trustees are entitled to a part of the township *school funds*, in the proportion as the number of school children of the town is to that of the township; and, after demand, may sue and recover that amount from the trustee; and perhaps from the county treasurer, if he has not paid over the amount before demand to the township trustee, 64 Ind. 275; 89 Ind. 251. The town succeeds to the control of the *school property* within its limits and is entitled to a conveyance thereof to it, 109 Ind. 559; 86 Ind. 582. See 37 Ind. 415; 63 Ind. 473; and 27 Ind. 465. The town can not exercise control over school property outside of its limits, 56 Ind. 521.

5. Process is served on the president of the board of trustees, R. S. 1881, § 316; or in an action against the school town, on the school trustees, § 4536; 55 Ind. 7.

Election Return.

The undersigned, A. B., C. D., and E. F., as inspectors, hereby certify that at an election held at the ——— post-office, within the following described territory, situate within the county of ———, and State of Indiana, to wit: [*Describe it*], between the hours of 8 a. m. and 6 p. m. on the ——— day of ———, 18—, to determine whether said territory should be incorporated as a town under the laws of the State of Indiana, to be known as the "Town of ———," the following was the result of said election, to wit:

Number of ballots having the word "yes" thereon . . . . . ———
Number of ballots having the word "no" thereon . . . . . ———

Majority in favor [*or*, against] the proposed corporation . . . ———

Dated, ———, 18—.

A. B.,
C. D.,
E. F.,
Inspectors.

State of Indiana, County of ———, *ss.*

A. B., C. D., and E. F., upon their oaths, say that the above and foregoing is a full, true and accurate return of the result of the election held at the time, and for the purpose therein specified.

A. B.,
C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Seal.]

L. X.,
Notary Public.

Order-Book Entry.

Whereas, on the ——— day of ———, 18—, A. B. and others presented a verified petition to this board, praying that the territory hereinafter described be incorporated as a town under the laws of the State of Indiana; and

Whereas, this board, after having examined said petition and having adjudged it sufficient, as well as the survey and map verified by affidavit, and after having received proof of the posting of notices of an intention to present said petition, ordered an election for the submission to the qualified voters of said territory whether it should be incorporated as a town, to be held on the ——— day of ———, 18—, between the hours of 8 a. m. and 6 p. m., at the ——— post-office; and

Whereas, said election was held in pursuance of said order, after ten days' notice given by the auditor of this county in the *Daily Argus*, a daily paper printed and published in this county, at the time and place designated in said order and notice; and

Whereas, it appears by the verified return of A. B., C. D., and E. F., inspectors duly chosen and qualified at said election, to this board, that the number of ballots cast thereat having the word "yes" thereon was ———, and the number cast having the word "no" thereon was ———, leaving a majority of ——— in favor of said proposed incorporation; and

Whereas, this board is fully satisfied of the legality of said election; therefore

It is declared, ordered, adjudged and decreed that the following territory, referred to aforesaid, situate in the county of ———, and State of Indiana, be and is hereby incorporated as a town, under the laws of the State of Indiana, by the corporate name of "The Town of ———," to wit: [*Describe the territory.*]

[1857, p. 84. Approved and in force February 19, 1857.]

Sec. 3302. Districts. 10. Such inspectors, when they shall have returned the statement as aforesaid, shall next proceed to divide said town into not less than three nor more than seven districts, having due regard to the equitable apportionment of population among the same and the conveniency and contiguity of such district.

This division should be in writing, signed by the inspectors, and entered in the records of the town board when organized. No notice of this districting seems to be required but publicity should be given to it, possibly by posting up copies of the order.

Division of Town into Districts.

We, A. B., C. D. and E. F., inspectors at the election held in the town of ———, and State of Indiana, on the ——— day of ———, 18—, for the purpose of determining whether said town should be incorporated, hereby divide said town into three districts for the purpose of electing trustees thereof, as follows, to wit: [*Describe each district by metes and bounds and number.*]

A. B.,
C. D.,
E. F.,
Election Inspectors.

Sec. 3303. Re-districting. 2. Any town heretofore incorporated under the act approved as aforesaid, may at any time ten days before the annual election, re-district the town according to the preceding section, for the purpose of electing officers for said town.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3304. Notice of corporation election. 11. They shall also give ten days' notice by publication in a newspaper, if one be printed within such town, or, if there be no newspaper, then by

posting such notices in five public places therein, of an election to be held in such town, for the purpose of electing officers thereof, naming the place therein and the day upon which the same shall be had; but such day named shall be within twenty days from the posting of such notices. Every subsequent notice of a corporation election shall be given, in like manner, by the clerk of said town.

1. A town can not be deemed incorporated until its officers and board of trustees have been elected, and a president thereof designated, 38 Ind. 41.

2. The fact that the town trustees were duly elected and qualified can not be questioned collaterally, 29 Ind. 118.

3. See notes to § 3037.

Election Notice.

Notice is hereby given to the electors of the town of ———, of the State of Indiana, that the first corporate election of said town will be held therein between the hours of 8 a. m. and 6 p. m. on the ——— day of ———, 18—, for the purpose of electing two trustees for each of the three wards, a town marshal, a town clerk, and a town treasurer. A poll will be opened at Thompson's blacksmith shop, situate at the northeast corner of Huron and Plum streets.

A. B.,
C. D.,
E. F.,
Election Inspectors.

Sec. 3305. Annual election. 12. An election for officers of said town, after the first election, shall be held annually on the first Monday in May of each year; and at every such election the preceding board of trustees, or any three of them, shall act as the inspectors thereof.

1. By an act of 1881 (p. 58), which took effect March 7, 1881, the election of all town officers, all acts, official orders, allowances, and assessments for taxes since 1877 were legalized. All ordinances and proceedings of towns since 1877 are to be received as competent evidence in all courts.

2. The old trustees formerly acted as inspectors of election, 49 Ind. 62; but now they appoint inspectors and judges for each precinct, § 3224.

[1883, p. 29. Approved and in force February 26, 1883.]

Sec. 3305*a*. Voting place. 1. In town elections there shall be but one place of voting, which shall be centrally located in the town and designated in the notice of such election given by the town clerk: *Provided*, That the trustee of any town may, if public convenience and public good require, establish by ordinance a precinct in each ward of such town.

Sec. 3305*b*. Laws repealed. 2. All laws and parts of laws coming in conflict with any of the provisions of this act, be, and the same are hereby repealed. [El. Sup. §§ 831, 832.]

1. See § 3308, *note* 1.

2. It is now made the duty of town trustees, by the election law of 1889, to divide the town into precincts containing not over two hundred and fifty voters each, and to locate a voting place in each precinct. This section is, therefore,

modified by that act. But this statement does not apply to the first corporate election held by the election inspectors. In such an instance there is only one polling place. This arises from necessity; for there is no one authorized to appoint election inspectors and judges for precincts.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3306. Polls—Opening and closing. 13. At all elections in said town, the polls shall be open at nine o'clock in the forenoon, and shall not be finally closed until four o'clock in the afternoon of said day.

The time of opening the polls is changed from 8 a. m. to 6 p. m. by the election law of 1889. See § 4698.

[1881 S., p. 703. Approved and in force April 14, 1881.]

Sec. 3307. Inspectors' duties. 14. Such inspectors shall preside at such first election, and be inspectors thereof; and, in the receiving and canvassing of votes, shall be governed by the laws then existing, so far as they are applicable for the election of township officers: *Provided, however,* In case of absence of any of the inspectors from the place of holding such election at nine o'clock in the forenoon, the qualified voters of the town present shall proceed to appoint such inspector, or inspectors, whose duties shall be the same as if they had been presiding at the election held for the purpose of incorporation.

By the election law of 1889 the inspector or judge must be present by 8 a. m. That law controls town elections so far as applicable, § 4698.

[1873, p. 218. Approved and in force March 10, 1873.]

Sec. 3308. Officers to be elected. 15. There shall be elected, at the first and at every subsequent election, one trustee from each district in said town, and also a clerk and treasurer, who shall respectively hold their offices until the first Monday in May next following, or until their successors are elected and qualified: *Provided,* That nothing herein contained shall prevent the respective offices of clerk and treasurer from being held by one and the same person.

1. A trustee must be elected, it was formerly held, for each district of a town, but by the voters of the whole town, 49 Ind. 62; but this rule has been modified by the act of 1881, § 3311; and while there is now two trustees for each district or ward, they need not be residents of the ward for which they are elected.

2. The constitution forbids one person to hold two *lucrative offices* at the same time; but it is questionable if that provision applies to a person holding the two offices of town clerk and treasurer. See § 90, *notes.*

3. The *town marshal* is now elected by the electors of the town, § 3325.

4. Officers of a town can have no interest in a town contract, § 3226*a*; not even the treasurer for grading streets, 110 Ind. 294; 91 Ind. 477. See § 3313, *note* 2.

Sec. 3309. Who elected — Tie — Certificate. 16. The persons having the greatest number of votes shall be declared elected as such trustees, and the persons who received the greatest number

of votes, respectively, for clerk and treasurer, as designated by the ballot for such office, shall be declared so elected; and if two or more shall have an equal and highest number of votes, and there be no choice, the inspectors of such election shall forthwith determine, by lot, which shall be deemed elected. And it shall be the further duty of such inspectors to make a certified statement, over their own signatures, of the persons elected to fill the several offices in said town, and to file the same with the clerk of the circuit court in the county thereof, within ten days from the day of such election. And no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with.

1. An act of 1875 (S., p. 74) legalizes elections prior to March 13, 1875, in towns wherein the certified statement had not been filed with the clerk within the prescribed time. This act is retrospective and curative only, 86 Ind. 180.

2. When the inspector of a town election does not certify within ten days, nor at any time, to the election of the persons elected as officers, the persons so elected have no authority. All ordinances passed by the board of trustees thus elected are void, 37 Ind. 66; but if the certificate is filed, even though ten days have elapsed, after the board organizes and transacts business, all its acts are thereby legalized, 103 Ind. 112 (overruling 45 Ind. 250; and 46 Ind. 552, and modifying 37 Ind. 66).

3. In an action on a penal ordinance it is not necessary to aver that the trustees which passed it were duly elected, 95 Ind. 70.

4. If there are a number of precincts, the inspectors of each precinct certify to the result in that precinct only, not declaring who is elected.

5. At all subsequent elections the board of town trustees appoint election inspectors for each precinct, §§ 3224, 4689, and clerks of election, § 4690. The inspector and judges of each precinct make out a certificate of the result in that precinct, § 4712, and deliver it to the inspector or to one of the judges designated by the election board. The several persons thus entrusted with these election certificates meet at the town hall, or other convenient place, on the following day and canvass the result, §§ 4736, 4715, 4716, 4717. They select one of their number as chairman and the clerk of the town as clerk, § 4716. They make out a certificate of the result, and sign it, declaring who is elected, § 4718. In case of a tie they determine the result by lot, §§ 4719, 4736. This certificate is deposited with the clerk of the circuit court, §§ 3309, 4786. The election board also makes out a certificate of election, and delivers it to the successful candidate, § 4736, which entitles him to the office on taking the usual oath, § 4737. If there is only one voting place, the inspector and judges make their return directly to the clerk of the circuit court.

6. It is evident that the board of election canvassers, where there is more than one precinct, or the election inspector and judges, where there is only one precinct, issue to the person elected to an office a certificate of election, §§ 4721, 4736; and that this certificate is not issued by the clerk of the circuit court. The provisions of the sections cited govern in this matter. This is also apparent from the fact that the election board has ten days to file a certificate of election with the clerk of the circuit court, §§ 3309; while the newly elected officers must qualify as such officers within five days, § 3313.

Election Certificate at First Election.

The undersigned, election inspectors at a special election held on the ——— day of ——— 18—, in the town of ———, of the State of Indiana, for the purpose of electing officers thereof, hereby certify that the following persons received the number of ballots set opposite their names for the offices designated, viz.:

A. B. for trustee, ... ———
C. D. " " . . . . . ———
E. F. " " . . . . . ———
G. H. " " . . . . . ———
I. J. " " . . . . . ———
K. L. " " . . . . . ———
M. N. for town clerk, ... ———
O. P. " " " . . . . . ———
Q. R. for treasurer, ... ———
S. T. " " . . . . . ———
U. V. for marshal, ... ———
W. X. " " . . . . . ———

A. B., C. D., and E. F. having each received the highest number of votes for town trustees, we declare them duly elected trustees of said town for the term of two years each, and G. H., I. J., and K. L. having received the next highest number of votes each, we declare them duly elected trustees of said town for the term of one year each.

We also declare that O. P. having received the highest number of votes for town clerk, is duly elected to said office for the term of two years; that Q. R. having received the highest number of votes for town treasurer, is duly elected to said office for the term of two years.

We also declare that U. V. and W. X. having received an equal and the highest number of votes for the office of town marshal, we cast lots to determine which of the two should be declared elected to that office; and as a result thereof we declare W. X. duly elected to said office for the term of two years.

Dated ————, 18—.

R. U.,
S. X.,
L. Y.,
Election Inspectors.

Precinct Return.

The undersigned, A. B., C. D., and E. F., as inspectors of election precinct number one, of the town of ———, of the State of Indiana, hereby certify that the result of the election held in said precinct for the election of officers of said town, on the ——— day of ———, 18—, between the hours of 8 a. m. and 6 p. m., was as follows, to wit:

Name.	Office voted for.	Number of ballots received.

Dated ———, 18—.

A. B.,
C. D.,
E. F.,
Inspectors.

Return of Board of Election Canvassers for the Town of ————.

The undersigned, members of the board of canvassers of an election held in the town of ———, of the State of Indiana, on the ——— day of ———, 18—, for the purpose of electing officers for said town, hereby certify as a result of said canvass, which was made by them at the town-hall of said town on the ——— day of ———, 18—, as follows, to wit:

Name.	Office voted for	Number of ballots.

They therefore certify and declare that A. B., C. D., and E. F., each respectively having received the highest number of votes, are duly elected trustees of said town of ———, each for the term of two years; that G. H. having received the highest number of ballots cast for the office is duly elected clerk of said town of ———; and that I. J. having received the highest number of ballots cast for that office, is duly elected treasurer of said town of ———.

They also certify that K. L. and M. N. having received an equal and the highest number of ballots cast for marshal of said town, they cast lots who should be entitled thereto, and as a result thereof, K. L. was and is declared entitled to the office of marshal of said town of ———.

[Signed.]

Members of the Board of Canvassers.

Dated———, 18—.

Certificate of Election.

To All Whom it may Concern:

This is to certify that at a general [*or*, special] election, held in the town of ———, of the State of Indiana, on the ——— day of ———, 18—, L. X. was duly elected to the office of ——————— in and for the said town of ———, to serve as such for a term of ———, and until his successor is elected and qualified.

In witness whereof, we have hereunto set our hands and seals this ——— day of ———, 18—.

A. B.,
C. D.,
E. F.,
Members of the Board of Canvassers,
[*or*, Election Inspectors, *when it is the first corporate election.*]

Oath of Office.

State of Indiana, County of ———, *ss.*

I, ———, do solemnly swear that I will support the constitution of the United States and the constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as ——— of the town of ———, according to law, and to the best of my ability. So help me God.

Subscribed and sworn to before me, this ——— day of ———, 18—.
[Seal.]
L. X.,
Notary Public.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3310. Clerk's duty. 17. It shall be the duty of the clerk of the proper county to make a record of such certified statement; for which service there shall be paid the same fee as is allowed clerks for similar services in other cases.

This record consists of entering the certificate at full length in the order book of the circuit court and certifying that it is a correct copy. The original should be preserved. The clerk of the circuit court can issue the following certificate to the person elected, although it is not necessary. It takes the place of the inspector's certificate.

Certificate of Election.

Office of Clerk of ——— *County*,
———, *Indiana*, ———, 18—.

To All Whom it May Concern:

This is to certify that in pursuance of the provisions of the general law for the incorporation of towns of this State and the acts of the general assembly supplemental and amendatory thereto, the board of canvassers of an election of the town of ———, of this State, have filed with me a certificate setting forth and declaring that at a ——— election, held in said town, on the ——— day of ———, 18—, A. B. was duly elected to the office of ———, and until his successor is elected and qualified.

In witness whereof, I have hereunto set my hand and affixed the seal of the ——— circuit court, this ——— day of ———, 18—.

[Seal.]

X. Y.,
Clerk of ——— County.

[For oath, see § 3309.]

[1881 S., p. 708. Approved and in force March 25, 1881.]

Sec. 3311. Trustees, how elected—Term. 1. At the next ensuing May election to be held for the election of town officers, as now provided by law, the town trustees shall be chosen in the following manner, to hold their offices for the time herein set forth: In a town where there are three trustees to be elected, the person receiving the greatest number of votes shall hold his office for two years from and after said election, and the two other persons receiving the next greatest number of votes each shall hold their offices for one year from said election. And where there are four trustees to be elected, the two persons receiving the greatest number of votes each shall hold their offices for two years, and the two persons receiving the next greatest number of votes each shall hold their offices for one year. And where there are five trustees to be elected, the two persons receiving the greatest number of votes each shall hold their offices for two years, and the three persons receiving the next greatest number of votes each shall hold their offices for one year. And where there are six trustees to be elected, the three persons receiving the greatest number of votes shall hold their offices for two years, and the three persons receiving the next greatest number of votes shall hold their offices for one year. And when there are seven trustees to be elected, the three persons receiving the greatest number of votes shall hold their offices for two years, and the four persons receiving the next greatest number of votes shall hold their offices for one year. *And it is further provided*, That at the May elections for the election of town officers, succeeding the May election of one thousand eight hundred and eighty-one, the town trustees of the districts

where a vacancy will occur, by reason of the expiration of the term, shall be elected for the term of two years each. In all cases where two or more persons receive an equal number of votes, and there be no choice, the inspector shall determine, as is now provided by law, as to who is elected.

1. The number of wards now determines the number of trustees only; but they are elected at large, and may all be elected from one ward alone.

2. There is no such a body as a board of councilmen under the above section. 76 Ind. 249.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

SEC. 3312. Vacancies. 18. A vacancy occurring in the board of trustees, or in any corporation office, shall be filled by appointment, at a special meeting of the trustees called for that purpose; but such appointment shall be made from the district, if a trustee [be appointed], in which the vacancy has occurred, and shall, in no case, extend beyond the annual election provided for in this act.

So far as the appointment must be made from a particular district, this section has been modified by § 3311, *note*. See § 3308, *note* 2.

Order of Appointment.

Whereas, a vacancy in the office of trustee of this town exists by reason of the resignation [*or*, death, *or*, abandonment thereof] of [*or*, by] A. B., a duly elected trustee of this town; therefore

C. D. is appointed as a trustee for the unexpired term of said office.

Certificate of Appointment.

This is to certify that at a special meeting duly called, of the board of trustees of the town of ———, county of ———, and State of Indiana, that C. D. was duly elected trustee of said town, to fill the vacancy caused by the resignation [*or*, death, *or*, abandonment] of A. B., which term will expire ———, 18—.

In testimony whereof, I have hereunto set my hand and the seal of said town this ——— day of ———, 18—.

[Town Seal.]

R. U.,
Clerk of the Town of ———.

SEC. 3313. President—Oath. 19. The board of trustees, chosen as aforesaid, shall elect a president from their own body; and such president, trustees, and all other officers elect, shall, within five days after such election, take and subscribe, before some person authorized to administer the same, the usual oath or affirmation for the faithful performance of the duties of their respective offices.

1. For oath, see certificate of election, under § 3310.

2. A trustee can make no contract with the town. Such a contract is absolutely void, 45 Ind. 250; but he may purchase bonds of the town or become the assignee of a contract with the town, though he will not be permitted to make a profit out of the latter, 77 Ind. 307.

3. The board of trustees of the civil town may elect one of their number a member of the board of trustees of the school town, 60 Ind. 288. See § 3308, *note* 4.

4. Under the general law for the incorporation of a town there is no such a body as the board of councilmen, 76 Ind. 244.

5. No provision, as in the case of cities, has been made specifying when the board of trustees shall meet, nor for the calling of special meetings, nor when the first meeting shall be. If all the trustees, or a majority of them, assemble after they have received their certificates of election and taken the proper oath, they may proceed to transact the business of the town, if there is no ordinance specifying when the first meeting shall be held. The time and place of meetings may be regulated by ordinance, as well as how special meetings may be called. At special meetings any business of the town may be transacted, unless some ordinance of the town restricts the transaction of business thereat.

Sec. 3314. Corporate name. 20. The president and trustees of such town, and their successors in office, shall constitute a body politic and corporate, by the name of the "Town of ———," and shall be capable, in law, to prosecute and defend suits to which they are a party.

1. The name of the town as a *school* corporation is "The School Town of ———." § 4438, *notes*.

2. Courts take *judicial notice* of the corporate name of a town.

[1859, p. 206. Approved and in force March 4, 1859.]

Sec. 3315. Order of incorporation, when conclusive. 1. In all cases where the inhabitants of any town in this State have taken steps to incorporate the same under "An act for the incorporation of towns, defining their powers, providing for the election of the officers thereof, and declaring their duties," approved June 11, 1852; and where the board of county commissioners of the county in which such town is situated have, in pursuance of such proceedings, made a final order declaring such town incorporated by the name designated, in pursuance of section nine of the above-recited act [§ 3301], such order shall be conclusive, and such town shall be deemed and taken to be an incorporated town: *Provided*, That nothing in this act shall be so construed as to affect any case where an appeal has been taken from such order, or where an appeal may hereafter be taken from such order within the time prescribed by law.

See § 3301, *note* 2.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3316. How old town may incorporate. 56. Any town heretofore incorporated may, by a resolution of the board of trustees or other municipal board thereof, entered upon the record-book of the corporation, become incorporated under this act; but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the clerk of the circuit court of the proper county, and entered by him of record. Trustees and other officers of such incorporated town

by whatever name designated, performing duties of a like nature to those required of officers created by this act, shall continue to be the officers of such town, by the name as specified in this act, until superseded by the annual election.

See notes to § 3039. This is the only statute authorizing an incorporated town, under a special statute, to become incorporated under the general law, 61 Ind. 97.

See § 3031, *note* 5. After surrender of the special charter a town is governed by any general law applicable to towns, whether then in force or thereafter enacted, 82 Ill. 472.

Resolution.

Resolved, by the board of trustees of the town of ———, that the special charter, and the acts amendatory and supplemental thereto, of said town be and the same is hereby surrendered, and all the rights and franchises acquired under said charter and amendatory acts are hereby surrendered and released; and the general law of this State for the incorporation of towns, to wit: "An act for the incorporation of towns, defining their powers, providing for the election of the officers thereof, and declaring their duties," approved June 11, 1852, and the acts amendatory and supplementary thereto, be and the same is hereby accepted as the law for the future control and government of said town.

Sec. 3317. Debts not affected. 58. No debt or liability due to or from any incorporated town shall be impaired by reason of such town being brought within the provisions of this act, and becoming incorporated under it.

1. See notes to §§ 3040 and 3041.
2. The old ordinances continue in force, § 3041, *note*.

Sec. 3318. Dissolution of town—Proceedings. 53. When an application, signed by one-third of the legal voters of any incorporated town, shall be presented to the board of trustees, in writing, asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for said board, if they deem the reasons good, to call a meeting of the voters of said town, by giving ten days' notice thereof, as provided in this act, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting, and a poll shall be opened, as at other corporation elections, and the voters shall vote by ballot, "Yes" or "No." If a majority of all the votes given shall have thereon the word "Yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote, signed by the president and attested by the clerk, shall be filed in the clerk's office of the county, and such town shall, at the expiration of six months from the time of holding such meeting, cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such town, at any special meeting thereof, may direct.

So far as applicable, the election law of 1889 (§ 4710*m*) must be followed. The board of trustees no longer presides, election inspectors and judges being appointed for that purpose, § 3309, *notes* 4 *and* 5. In no other way than pointed

out in this statute can a corporation be dissolved, 26 Ind. 308. No provision has been made for the custody of the books of a dissolved town. Perhaps the clerk of the circuit court may take charge of them.

Petition.

To the Board of Trustees of the Town of ———:

The undersigned, one-third of the legal voters of said incorporated town, pray that the said town be dissolved and its rights as a corporation be surrendered, for the following reasons, viz.: [*State the reasons in general terms.*] And they pray that your honorable board call a meeting of the voters of said town to determine whether said corporation shall be dissolved.

[Signed.]

Journal Entry.

Whereas, A. B. and others, constituting at least one-third of the legal voters of the town of ———, of the State of Indiana, have presented a written petition to this board praying that said corporation be dissolved; therefore

It is ordered by the board of trustees of the town of ——— that a special meeting of the legal voters of said town be held at the usual voting place on the ——— day of ———, 18—, for the purpose of determining whether such corporation shall be dissolved, ten days' notice of said meeting being first given by the town clerk.

Election Notice.

Notice is hereby given to the legal voters of the town of ———, of the State of Indiana, that a meeting of the legal voters of said town on the ——— day of ———, 18—, between the hours of 8 a. m. and 6 p. m., will be held for the purpose of determining whether said corporate town be dissolved, as A. B. and one-third of the legal voters thereof have petitioned the board of trustees of said town. Said meeting will be held at the Luke's carpenter shop, situate on the northeast corner of Warren and Link streets, where a poll will be opened for the purpose of receiving ballots.

By order of the board of trustees of the town of ———.

L. X.,
Town Clerk.

Election Board's Certificate.

The undersigned, A. B. as inspector, and C. D. and E. F. as judges, of a special election of the legal voters thereof, held in the town of ———, of the State of Indiana, on the ——— day of ———, 18—, pursuant to an order of the board of trustees of said town, for the purpose of determining whether said town or corporation shall be dissolved, hereby certify that the result of said election was as follows, to wit:

Number of ballots cast with the word "Yes" thereon . . . . . ———
Number of ballots cast with the word "No" thereon . . . . . ———
Majority in favor of [*or*, against] the dissolution of said corporation . . . . . ———

Dated ———, 18—.

A. B.,
Inspector.
C. D.,
E. F.,
Judges.

Certificate of Result.

The undersigned, L. X., president of the board of trustees of the town of ———, of the State of Indiana, hereby certifies that on the ——— day of ———, 18—, there was presented to the board of trustees of said town a petition

signed by at least one-third of the legal voters of said town, praying that said town be dissolved; that in pursuance of the prayer of said petition the said board of trustees ordered that a special meeting of the legal voters of said town, of which the clerk was required to give due notice, be held in said town on the ——— day of ———, 18—, between the hours of 8 a. m. and 6 p. m., for the purpose of determining whether said corporation should be dissolved; that in pursuance of said order, notice was given and a meeting held at the time and place designated, and the result of said election, as appears from the return of the election inspector and judges [*or*, board of canvassers, *when there is more than one precinct, see note* 4 § 3309], filed with the clerk of said town, was as follows, to wit:

Number of ballots in favor of such proposed dissolution . . . . ———
Number of ballots against such proposed dissolution . . . . . ———

Majority in favor of such proposed dissolution . . . . . ———

I also certify that those voting in favor of said dissolution were at least two-fifths of all the legal voters of said town.

In testimony whereof, I have hereunto set my hand and caused the seal of said town to be affixed this ——— day of ———, 18—.

Attest:
[Seal.] U. L.,
Clerk of the Town of ———.

L. X.,
President of the Board of Trustees
of the Town of ———.

Sec. 3319. Rights and contracts not affected. 54. No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

On the effect of a dissolution, see § 3130.

ARTICLE 2—GOVERNMENT AND POWERS.

SEC.
3320. Official bonds.
3321. Books, etc., to successor.
3322. Duties of treasurer.
3323. Publication of treasurer's settlement.
3324. Duties of clerk.
3325. Marshal.
3326. Marshal.
3327. Duties of marshal.
3328. Duties of trustees as to streets.
3329. Fire-wardens.
3330. Pay of officers.
3331. Town suing—Proof.
3332. Special meeting of voters.
3333. Powers of trustees.
3334. Shade-trees.
3335. Fire limits.
3336. Lighting streets.
3337. Tax for lighting.
3338. Public grounds and wharves.
3339. Money, how appropriated.
3340. Claims.
3341. Money, how drawn.
3342. Loans.
3343. Bonds.
3344. Proceeds paid treasurer.
3345. Tax to pay interest.
3346. Fines.
3347. Suits—Imprisonment.
3347*a*. Justice of the peace for town.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3320. Official bonds. 28. The clerk, treasurer, and marshal shall, within ten days from their election or appointment, each and severally give bonds, payable to the State of Indiana, with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall, respectively, be for double the amount of the estimated tax duplicate for the current year.

For general form of bond, see § 3095.

Sec. 3321. Books, etc., to successor. 29. All books, vouchers, moneys, or other property belonging to the corporation, and in

charge or possession of any officer of the same, shall be delivered to his successor when qualified.

For demand for possession of books and office, see § 3095.

Sec. 3322. Duties of treasurer. 39. The treasurer of every incorporated town shall so keep his accounts as to show when and from what sources all moneys paid him have been derived, and to whom and when such moneys, or any part thereof, have been paid. The treasurer shall grant all licenses authorized by this act, upon the presentation of the receipt of the marshal that the money therefor has been paid to said marshal. His books, accounts, and vouchers shall, at all times, be subject to the examination of the board of trustees; and it is hereby made their duty to examine the same at a regular meeting of such board, on some day between the first and last Monday of April in each year, and to have settlement with the said treasurer.

1. For *license*, see § 3068. Effect of settlement, § 3079, *note* 2.

2. The treasurer is liable for all the town's moneys coming to his hands; and can not set up that the town obtained them illegally. He and his bondsmen are liable for all moneys in his possession at the time the bond is given, and for all received thereafter, 85 Ind. 10; 94 Ind. 159. Nor can the treasurer refuse to pay over the town's moneys on the ground that his election was void or illegal, 86 Ind. 180. The treasurer may use the town funds as he sees fit, only being required to pay them over on proper demand, 94 Ind. 159. See § 3083, *note* 2. When the county treasurer collects the town tax he pays it over to the town treasurer, § 3225*a*.

3. In making a settlement with the trustees the treasurer should make a report of his receipts and disbursements, similar to the forms used under § 3083, changing it to suit the facts and circumstances. If desired, these reports can also be entered in the treasurer's books. The reports should be in duplicate, one filed with the town clerk and the other retained; and if it is approved, the board should enter a memorandum in their journal as follows, to wit:

Settlement with Treasurer.

The board having this day examined the books, accounts and vouchers of the town treasurer, and the report of his receipts and expenditures for the year ending April first of the present year, which report was filed with the clerk of this town on the ——— day of ———, 18—, and having found them in all respects correct, said report is hereby approved, and a settlement is hereby made with said treasurer in accordance with said report. The town clerk is ordered to indorse upon said report the approval of this board, as well as upon the duplicate copy retained by him; and to cause to be published in the *Weekly Argus* an exhibit of such receipts and expenditures.

Approval.

The within report was approved by the board of trustees of the town of ———, at a regular meeting held on the ——— day of ———, 18—.

L. X.,
Town Clerk.

Receipt.

$—— No. ——

———, Ind., ——— 18—.

Received of A. B. ——— dollars for a license to peddle ——— ——— days from this date within the town of ———, in accordance with the provisions of the ordinances of said town.

U. Z.,
Town Marshal.

Sec. 3323. Publication of treasurer's settlement. 40. It shall be the duty of the board of trustees, immediately after the annual settlement with the treasurer of said corporation, to publish in a newspaper, if one be printed therein, or, if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each.

Receipts and Expenditures of the Town of ———.

We hereby certify that the following is a true exhibit of the receipts and expenditures of the town of ———, of the State of Indiana, for the year beginning April 1, 18—, and ending April 1, 18—, viz.:

RECEIPTS.

Source of Receipts.	Amount.		
	Dols.	Cents.	

EXPENDITURES.

On what account paid out.	Date.	Amount.		By what authority paid.
		Dols.	Cents.	

The Board of Trustees of the Town of ———.

By U. Z.,
Town Clerk.

Sec. 3324. Duties of clerk. 41. The clerk of such town shall have the custody of the records, books, and papers of the board of trustees, and shall attend all meetings and record the proceedings of said board, and shall perform all other duties appertaining to his office and required of him by the by-laws.

Power and duty of clerk over records, see § 3068, *notes*.

[1879, p. 15. Approved and in force March 10, 1879.]

Sec. 3325. Marshal. 2. The town marshal shall be elected by the qualified voters, as other officers are elected under the present election laws of this State, in all incorporated towns of this State; and he shall hold his office for one year, or until his successor is elected and qualified.

Sec. 3326. Marshal. 4. Whenever any vacancy shall occur in the office of town marshal, by death, resignation, or removal, the board of trustees of such incorporated town shall have power to appoint a successor, who shall hold his office until his successor is elected and qualified.

[1889, p. 40. Approved and in force February 25, 1889.]

Sec. 3327. Powers of marshal. 42. The marshal of such town shall possess the powers and be subject to the liabilities possessed and conferred by law, upon constables, in executing the orders of the trustees or enforcing the by-laws and ordinances of said town. Such town marshal shall have, in addition to powers they now possess, the jurisdiction and powers of constables in their respective counties, and shall be entitled to the same fees as constables while acting as constables. [El. Sup. § 828.]

The marshal of a town may *arrest* offenders *on view*. An ordinance against fast driving is valid, 48 Ind. 19. He may *detain* him if the arrest is at night until the usual hours of business the next morning, or over Sunday until Monday morning; or if the prisoner is so intoxicated as not to be fit for trial, until he is sober, 47 Ind. 289.

2. The *powers* of a town and city marshal to make arrests do not differ. See § 3076, *notes*. He is not authorized to appoint a *deputy*. Pursuit of *fugitives*, §§ 3076*a* to 3077*c*.

3. The board of *trustees* may bind the town by employment of *counsel to defend* the marshal in a civil action brought against him for false imprisonment occasioned in making an arrest for a violation of a town ordinance, 103 Ind. 196. But the town is not liable for an unlawful arrest made by the marshal, 27 N. E. Rep. 301; 88 Ind 330.

4. When marshal is road supervisor, § 3367. When he works prisoners on the streets, § 3347. May serve as street commissioner, § 3333, clause 10, *note*.

5. The marshal is entitled to exactly the same fees that a constable is entitled to for the same services. For *fees*, see § 3077*a*; for *mileage*, § 3077*b*.

Sec. 3328. Powers of trustees as to streets. 43. The board of trustees shall superintend the grading, paving, and improving of streets, and the building and repairing of sidewalks.

1 The constant and *exclusive use*, by a railroad company, of part of a street for a right of way, can not ripen into absolute ownership, 47 Ind. 25. See § 3161, note 15.

2. The board of trustees must keep the *streets and alleys* in a *safe* condition for travel; and if they do not, and thereby an injury is caused, the town will be liable for its *negligence*, even though the unsafe condition was caused by a third person, the town having notice of such defect, or it had existed long enough to give it constructive notice thereof, 66 Ind. 136; 57 Ind. 192. They must keep the *bridges* in repair, 57 Ind. 192; 55 Ind. 250. Duty to repair, see § 3161, notes 16 *to* 18.

3. They have *exclusive control* over the street and public highways within the town, to the exclusion of the township supervisor, 65 Ind 404; see 76 Ind. 244. They have plenary power to grade and improve streets and sidewalks, 6 Ind. 237; § 3363.

4. They can not maintain an action of trespass *quare clausum fregit* for an injury to a highway, 1 B. 88; but may recover of any one causing the injury to the street or to a bridge the cost of *repairing* it; or whatever damages it has had to pay by reason of such injury, 57 Ind. 192; 55 Ind. 250.

5. They can not grant the *exclusive* right to a company to lay and maintain gas-pipes in the street, 114 Ind. 332.

6. That *streets* and alleys *are highways*, see § 3161, *note* 5; *unauthorized use* of street, § 3161, *notes* 6 *to* 10; *dedication*, § 3161, *notes* 11 *to* 14; *bridges*, by whom built, § 3161*a*.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3329. Fire-wardens. 44. The fire-wardens shall attend all fires, give their personal superintendence to extinguishing the same, do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. Trustees shall, by virtue of their office, be fire-wardens.

See § 3198, *note*.

Sec. 3330. Pay of officers. 45. The trustees, clerk, treasurer, and marshal shall, respectively, receive for their services such compensation as the board of trustees, in their by-laws, may direct; and said board shall cause to be paid to all other officers of such town, for their services, a just and reasonable compensation.

See § 3105, *notes*, and for salary ordinance. The town marshal is not entitled to fees in town prosecutions; his salary being all the compensation he is entitled to. See 69 Ind. 244.

Sec. 3331. Town suing—Proof. 55. Whenever any suit shall be instituted by an incorporated town, it shall not be required to show its compliance with the provisions of this act as to its organization, or as to publication of by-laws or ordinances, unless the same is controverted by affidavit.

The organization of the town can not be even controverted by affidavit under the present laws. See §§ 3315 and 3301, *notes*. Only the publication of an ordinance can be controverted; and that must be done by a sworn answer in the shape of an affidavit. For comment on a similar provision and a form of affidavit, see notes to § 3064.

Sec. 3332. Special meeting of voters. 21. Special meetings of the qualified voters may be called by the clerk, by order of the trustees of said town, by giving ten days' notice thereof in a newspaper, if any be printed in such town; otherwise, by posting up such notices in five public places therein; and such notice shall state the objects for which such meeting is called.

For a form of order and notice (which will require some modifications, easily made), see § 3318. No petition for a special meeting is necessary.

[1885, p. 171. Approved and in force April 10, 1885.]

Sec. 3333. Powers of trustees. 22. The board of trustees shall have the following powers:

1. That the board of trustees can not *delegate* its *powers*, see § 3096, *note* 3; extent of *jurisdiction*, § 3106, *note* 1; *change or repeal* of statute, § 3106, *note* 2; *limit of powers*, § 3106, *note* 3; *liability* for *non-exercise* of powers, § 3106, *note* 4; *liabibity* for exercise of *ministerial* powers, § 3106, *note* 5; *consequential injuries*, § 3106, *note* 6; throwing a *stream of water* on land, § 3106, *note* 7; *surface water*, § 3106, *note* 8; *freshets*, § 3106, *note* 9; *outlets* for water, § 3106, *note* 10; must use *reasonable diligence*, § 3106, *note* 11; selection of *plan* of public works, § 3106, *note* 12; *incidental power*, § 3106, *note* 13; failure to enforce ordinance, § 3106, *note* 14; *torts* of officers, § 3106, *note* 15; *contracts*, § 3106, *note* 17; *ratifying* contract, § 3106, *note* 18; *compromise*, § 3106, *note* 19; *arbitration*, § 3106, *note* 20; *estoppel*, § 3106, *note* 21; *borrowing money*, § 3106, *note* 22; powers under *general welfare* clause, § 3155 *notes; encumbering streets*, § 3106, clause 15, *notes*. *Drains or ditches* may now be run through a town under section two of the drainage law of 1885 (Acts 1885, p. 129), as amended in 1889 (Acts 1889, p. 285, El. Sup. § 1198). If possible, such ditches must be confined to the streets. Property in the town may be assessed with benefits. Under an act 1891 a city or town may now be assessed with benefits when the ditch constructed exceeds five miles in length (Acts 1891, p. 455).

2. *Ordinances* are essential to put the powers conferred by this section into force, 60 Ind. 371; 38 Ind. 49; for they are not *self-executing*, Id.

Sec. 3333. Seal. *First.* To have a common seal, and to alter the same.

See § 3102, *notes*.

Second. To purchase, hold, and convey any estate, real or personal, for the use of the corporation, so far as such purchase may be necessary to carry out the objects contemplated by this act.

See § 3106, clause 45, *notes*. The trustees can not *borrow money* to purchase real estate, or purchase it on *credit*, unless upon a petition of five-eighths of the citizen tax-payers of the town. Such a purchase is void and may be enjoined. But a purchase for *cash* is not, 45 Ind. 250; 60 Ind. 504; § 3342.

Sec. 3333. Fire companies—Ashes—Fires—Fireworks—Waterworks. *Third.* To organize fire companies, and hook and ladder companies; to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire-buckets (which are hereby declared to be appurtenances to the real estate, and exempt from execution, seizure, or sale); and if the owner shall refuse to procure suitable ladders or fire-buckets, after reasonable notice, the trustees may procure and deliver the same to him, and, in default of payment therefor, may recover of said owner the value of such ladder or fire-buckets, by suit before any justice of the peace in the proper township, and costs accrued thereby. To regulate the storage of gunpowder and other dangerous material. To direct the construction of a place of safe deposit of ashes; and they may, under any order by them entered upon the proper book of the board, visit, or appoint one or more fire-wardens to visit, and examine, at all reasonable hours, dwelling-houses, lot[s], yards, inclosures, and buildings of every description; discover if any of them are in a dangerous condition, and provide proper remedies for such danger. To regulate the

manner of putting up stove-pipe[s]. To prevent out-fire[s] and the use of fireworks, and the discharge of firearms within the limits of said corporation, or such parts thereof as they may think proper. To compel the inhabitants of such town to aid in the extinguishment of fires and prevent its communication to other buildings, under such penalties as are in this act provided. To construct and preserve reservoirs, wells, pumps, and other water-works, and to regulate the use thereof. And, generally, to establish other measures of prudence for the prevention or extinguishment of fires, as they shall deem proper.

1. The town may purchase a *fire engine* for cash; or on credit when a petition is filed, 60 Ind. 504; § 3342. It has inherent power to make the purchase, 106 Ind. 129.

2. Town has inherent power to *prevent danger* from fire, 85 Ind. 276, S. C. 44 Am. R. 13; or to enact ordinances for the protection of the property of its citizens, 100 Ind. 575, S. C. 50 Am. R, 830; 106 Ind. 129.

3. *Fire works and arms*, § 3106, clause 3, *note*, and § 3333, clause 6; *gunpowder*, § 3106, clause 3, *note* 2; *water-works*, § 3106, clause 26, *notes*, and §§ 3265 to 3285.

4. The town may prescribe *fire limits*, and prevent the erection of wooden buildings therein. It may *remove* buildings dangerous to the community, 100 Ind. 575; S. C. 50 Am. R. 830; or prevent the keeping of large quantities of inflammable material (as straw), within the thickly populated part of the town, 85 Ind. 276; S. C. 44 Am. R. 13.

Sec. 3333. Nuisance. *Fourth.* To declare what shall constitute a nuisance, and to prevent, abate, and remove the same; and to take such other measures for the preservation of the public health as they shall deem necessary.

See § 3106, clause 4, *notes;* § 3106, clause 11, *notes;* § 3106, clause 22, *note.*

Sec. 3333. Animals. *Fifth.* To regulate and prohibit the running at large of cattle, horses, swine, fowls, and other animals; and to provide for the impounding, keeping, sale and redemption of the same when found in violation of the ordinance in such case provided.

See § 3106, clause 21, *notes.* Before the amendment of this statute in 1885, the town had no power to impound and sell animals, 80 Ind. 487.

Sec. 3333. Gaming, houses of ill-fame—Firearms, etc. *Sixth.* To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame; and to authorize the seizure and destruction of gambling apparatus. To punish intoxication, common prostitutes and their associates, and immoderate driving or riding. To regulate or prohibit the use of firearms, fireworks, or other things tending to endanger persons or property. To prevent interference with the free use of the streets and alleys of the town. And to preserve peace and good order, and prevent vice and immorality.

1. *Vice and immorality*, § 3106, clause 7, *note; gaming, houses of ill-fame, gambling* apparatus, § 3106, clause 9, *notes;* 60 Ind. 457; firearms, § 3333, clause 3; *prostitutes*, § 3106, clause 20, *notes;* driving, § 3106, clause 17, *note; encumbering streets*, § 3106, clause 17, *notes;* § 3161, note, and § 3191; may prevent drunkenness, 47 Ind. 289.

2. In order to preserve the peace and good order, unless a state law is violated, an ordinance is essential, 103 Ind. 196. The town may prohibit driving or riding faster than a trot, and inflict fines therefor. Such an ordinance is reasonable; and the marshal may arrest any one on view driving in violation of such an ordinance, 48 Ind. 19.

Sec. 3333. Auctions—Licenses. *Seventh.* To license, regulate, or restrain auction establishments, street auctions, and all tables, machines, devices, and places for sports or games kept for hire or pay, traveling peddlers, public exhibitions, and the sale of spirituous, vinous, malt, and other intoxicating liquors within the corporation: *Provided*, That where such license is granted to sell spirituous, vinous, malt, and other intoxicating liquors, a sum not exceeding the amount required by the statutes of the State for license to sell or retail intoxicating liquors, may be required to be paid into the treasury of the corporation by the person so licensed, before receiving such license.

1. See § 3106, clause 13, *notes*. Towns may charge $250 for licenses to sell intoxicating liquors, § 3226*c*; *games*, § 3106, clause 14, *notes; exhibitions*, § 3106, clause 15, *notes;* peddling, § 3106, clause 23, *notes*. This clause is *constitutional*, 77 Ind. 213.

2. Formerly a town had no power to require a license of vendors of intoxicating liquors, 40 Ind. 340, 449; 33 Ind. 507, 510; 60 Ind. 327; 61 Ind. 24; 62 Ind. 21; 74 Ind. 590; and money voluntarily paid for a license then could not be recovered back, 46 Ind. 552; 51 Ind. 264; 55 Ind. 14 (overruling 40 Ind. 340, and 46 Ind. 552); 60 Ind. 327; 61 Ind. 445; but if paid conditionally under a contract to pay back it may be so recovered, 84 Ind. 31.

3. A license is not a *contract*, and may be revoked by the legislature at its pleasure, 77 Ind. 213; 120 Ind. 476. Both the town and the county may exact a license, and both may punish for all sales without them, § 3066*a*, notes; 90 Ind. 258.

4. A town may *prohibit* the sale of liquor unless a license is first taken out, 118 Ind. 103.

5. An ordinance is valid which requires the applicant to *first procure a county license*. A male applicant for a license can not assail an ordinance because *females* are not entitled to a like license. The town may prohibit the sale of fermented *cider*, 118 Ind. 114.

Sec. 3333. Markets. *Eighth.* To establish and regulate markets and build market-houses, and to direct the location of slaughter-houses.

See § 3106, clauses 11 and 29, *notes*.

Sec. 3333. Grading streets. *Ninth.* To lay out, open, grade, and otherwise improve the streets, alleys, sewers, sidewalks, and crossings, and keep them in repair, and to vacate the same.

See §§ 3357 to 3366; vacation of streets, §§ 3367 to 3373. The marshal may execute the orders of the board of trustees under this clause, but the street commissioner is the proper officer, 76 Ind. 244.

Sec. 3333. Commissioners—Fire-wardens. *Tenth.* To appoint street commissioners and fire-wardens, not exceeding three.

Street commissioner, § 3368, should execute the orders of the board with respect to streets, 76 Ind. 244. Fire-wardens, § 3329.

SEC. 3333. Incumbering of sidewalks. *Eleventh.* To prohibit the incumbrance of the sidewalks of said town, and riding or driving thereon except to cross the same.

See § 3328, *notes*, and § 3161, *notes* 6 *to* 10; § 3361.

SEC. 3333. Insurance. *Twelfth.* To insure the public property of such town.

SEC. 3333. Cemeteries. *Thirteenth.* To purchase, lay out, and regulate cemeteries.

See § 3106, clause 5, *notes*. The trustees can only buy for cash, unless a petition signed by five-eighths of the tax-payers requests them to purchase on credit, § 3342; 45 Ind. 250; 60 Ind. 504.

SEC. 3333. Shade-trees. *Fourteenth.* To plant trees upon public grounds, and along the streets of such town, and provide for their culture and preservation; and to inclose any public square or other public grounds within said corporation.

See §§ 3334, 3229, *note*, 3229*a*, 3229*b*, and 3106, clause 46, *notes*.

SEC. 3333. Taxes—Dogs. *Fifteenth.* To levy and collect annual taxes, not exceeding fifty cents on the hundred dollars' valuation (and twenty-five cents poll-tax) on all property subject by law to taxation; and on each male dog a tax not exceeding one dollar, and on each female dog a tax not exceeding two dollars, to be paid by the owner thereof.

1. Tax to pay for *real estate*, § 3343, and *interest* thereon, § 3345; road tax, § 3356, 3156*a*; *special school* tax, § 4467; *local school tuition* tax, § 4469; tax to pay *school debts*, § 4471; *schools generally*, § 3333, clause 19; *dogs*, § 3156, *note* 14; *bank stock*, § 3254 to 3260, *notes; gas tax*, § 3337.

2. When tax is levied, § 3348.

3. The general state tax law applies to the assessment and collection of taxes, § 3263, *note;* § 3264.

SEC. 3333. General welfare clause—Publication of ordinances. *Sixteenth.* To make and establish such by-laws, ordinances, and regulations, not repugnant to the law[s] of this State, as may be necessary to carry into effect the provisions of this act; and to repeal, alter, or amend the same as they shall seem to require. But every by-law, ordinance, or regulation, unless in a case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places, at least ten days before the same shall take effect.

1. For discussion of powers under general welfare clause, see § 3155, *notes*.

2. An ordinance fixing the grade of a street must be either published or be put in force by an emergency clause; and any contractor grading a street according to the provisions of an ordinance not thus put in force will be liable to the abutting lot-owner who is injured by such grading, 108 Ind. 208.

SEC. 3333. School tax. *Seventeenth.* Such board of trustees shall have power to complete school-houses now in progress of erection, and provide for the payment of the same; to erect or provide such school-houses as may be necessary for the use of the

schools of the town; to keep them in repair; and to provide fuel and other necessaries therefor.

See §§ 4467 to 4471; and §§ 3343 to 3345. The civil town is not liable for a school building, but the school town is liable, 59 Ind. 520. The validity of this clause is doubtful.

Sec. 3333. Wharves. *Eighteenth.* To construct all necessary wharves and landings for steamboats and other vessels, where such town is situated on the bank of any navigable stream or water-course.

See § 3106, clause 34, *notes*.

Sec. 3333. Tax for support of schools. *Nineteenth.* The said board of trustees shall have power to levy and collect annual taxes, not exceeding thirty cents on the hundred dollars' valuation, on all property subject by law to taxation, for the support of town schools within their said corporation.

This is a tuition tax. See §§ 4469, 4470. The validity of this clause is doubtful.

[1865, p. 78. Approved March 6, 1865, and in force September 2, 1865.]

Sec. 3334. Shade-trees. 1. The board of trustees of any incorporated town shall have power, with the consent of persons owning more than one-half of the lots along any street (counting by lineal feet of street front), to authorize all persons owning or occupying such lots to inclose portions of the street in front of their lots, and to occupy the same for shade and ornamental purposes, but not for buildings or permanent structures, and not to as to reduce the street and sidewalks below the width of sixty feet.

See § 3106, clause 46, *notes;* §§ 3229, 3333, clause 14.

[1867, p. 219. Approved and in force March 1, 1867.]

Sec. 3335. Fire-limits. 1. Whenever two-thirds of the owners of real estate within the proposed fire-limits, residents within the corporate limits of such town, on any street or streets, or designated parts of any street or streets, of any incorporated town in this State, shall petition the board of trustees of such town for the passage of an ordinance establishing fire-limits and preventing the erection of wooden buildings on such street or streets, or designated parts of street or streets (which petition shall accurately describe the proposed boundaries thereof), and such board shall be satisfied that said petition contains the names of two-thirds of the owners of real estate within such limits, and that such proposed ordinance would be just and expedient, they shall pass an ordinance prohibiting the erection of any wooden buildings within the limits described in such petition: *Provided, however,* That such fire-limits shall be confined, as near as practicable, to the business part of such town.

See § 3106, clause 32, *notes;* § 3333, clause 3, *note* 4.

[1879 S., p. 204. Approved March 19, 1879, and in force May 31, 1879.]

Sec. 3336. Lighting streets. 1. The board of trustees of any incorporated town is hereby empowered, in addition to the powers they now have, to contract for lighting the streets of such town with gas, in all cases where gas-works have been erected and mains laid on the streets to be so lighted. Such contract shall not, however, be made for a longer period than one year at a time.

Electric light, 3229*c*.

Sec. 3337. Tax for lighting. 2. In all cases contemplated by the preceding section, and where such contract has been made under said section, such board of trustees is hereby authorized to levy and collect a special tax, for such purpose, of not exceeding three dollars on the one thousand dollars of the taxable property within such incorporated town, to be levied and collected as other corporation taxes are now levied and collected.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3338. Public grounds and wharves. 49. The trustees shall have jurisdiction over any commons or public ground belonging to said town, and shall have power to regulate, with the consent of a majority of the owners thereof, the banks, shores, and wharves of that portion of any navigable stream within its corporate limits; but no ferries heretofore, or which may hereafter, be established by law, shall be prejudiced or in any manner affected by the provisions of this act.

See § 3333, clause 18, and § 3106, clause 34, *notes*, concerning *wharves;* and § 3103, *notes*, for *ferries*. Money raised for repairing streets can not be used for building wharves, except so far as they may be a mere incident to the legitimate improvement of a street, 6 Ind. 237.

Sec. 3339. Money, how appropriated. 24. All moneys, however derived, belonging to such corporation, shall only be appropriated for such objects and defraying such expenses as accrue, or necessarily arise, in the exercise of powers granted by this act. No appropriation shall be made without an order to that effect entered upon a proper book, to be kept for that purpose by such board.

This section does not prohibit a town from appropriating money to pay counsel for defending the town marshal when sued for false imprisonment in making an arrest for a violation of a town ordinance, 103 Ind. 196.

Sec. 3340. Claims. 25. No account or claim against said town shall be audited or allowed by the board of trustees, unless it be made out fully and itemized. And every such account audited shall be numbered from one upward, in the order they were presented, and a memorandum of the same entered upon a book to be kept exclusively for that purpose.

Sec. 3341. Money, how drawn. 26. No account or claim shall be paid unless audited and allowed by the board as aforesaid; and no moneys shall be drawn from the treasury, except by a warrant

upon the treasurer, signed by the president of said town and attested by the clerk thereof.

[1891, p. 389. Approved and in force March 9, 1891.]

SEC. 3342. Loans. 27. No incorporated town under this act shall have power to borrow money or incur any debt or liability, unless a majority of the resident owners of the taxable real estate of said town shall petition the board of trustees to contract such debt or loan. Such petition shall have attached thereto an affidavit verifying the genuineness of the signatures to the same. And for any debt created thereby, the trustees shall add to the tax duplicate, of each year successively, a levy sufficient to pay the annual interest on such debt or loan, with an addition of not less than five cents on the hundred dollars, to create a sinking fund for the liquidation of the principal thereof.

1. Previous to 1891 this section was repealed so far only as it relates to the issuing of *bonds* by towns for the purposes specified in sections 4488 and 4489. See 44 Ind. 83; 58 Ind. 329; 22 Fed. Rep. 589.

2. The trustees of a town may purchase, for *cash*, necessary apparatus for the extinguishment of fires. On proper petition of the required number of tax-payers, they may purchase such apparatus on credit; and they may give *commercial paper*, 60 Ind. 504; 72 Ind. 91.

3. The debt created in accordance with the petition can not be rendered invalid by the petitioner signing a remonstrance after such debt is created, 60 Ind. 504; but signing a remonstrance after signing a petition is equivalent to a withdrawal of the name of the signer from the petition; and this he may do at any time before the petition is acted upon, 24 Ind. 146.

4. Loaning the credit of the town, see 30 Ind. 485.

5. A purchase on credit of property, without a petition, is void, 45 Ind. 250.

[1875, p. 149. Approved and in force February 25, 1875.]

SEC. 3343. Bonds. 1. Any incorporated town in this State, which shall have, heretofore, by the action of its board of trustees, commenced the erection of any public building, to be used as a market-house, engine-house, or for other public purposes, and shall not have the necessary means with which to complete such building, on the passage of an ordinance, authorizing the same, by the board of trustees of said incorporated town, may issue the bonds of such town, to an amount not exceeding in the aggregate ten thousand dollars, in denominations not less than fifty dollars nor more than five hundred dollars, and payable at any place that may be designated in the bonds, the principal in not less than one year nor more than ten years after the date of such bonds, and the interest annually or semi-annually, as may be therein provided, to provide the means with which to complete such building *Provided*, That such bonds shall not be sold at a price less than ninety-four cents on the dollar, nor bear a greater rate of interest than eight per cent. per annum.

1. See §§ 4488, 4489.

2. The interest may be secured by coupons attached to the principal bond; and these coupons may be detached, and suit maintained upon them when due, 53 Ind. 191.

3. The supreme court of the United States has decided that a town of this State can not issue and sell in open market negotiable paper for the purpose of raising money to fund its indebtedness, although it has a general authority to contract loans and issue evidences of debts, to raise money to pay its necessary expenses and indebtedness. The fact that such paper was issued to take up valid paper previously issued does not render the last issue valid. Nor is the town prevented from defending by reason of the fact that it has received the proceeds derived from the sale of such negotiable paper, 11 Sup. Ct. Rep. 441, affirming 22 Fed. Rep. 589. In an action upon bonds issued by a town the authority to issue them must be alleged and proved, and the purpose for which they were issued, if the bonds contain no recital of those facts, 118 U. S. 148; S. C.; 6 Sup. Ct. Rep. 1025, affirming 8 Fed. Rep. 777.

Sec. 3344. Proceeds paid treasurer. 2. The proceeds of the sales of such bonds shall be paid to the treasurer of said incorporated town, to enable said board of trustees to complete such building; but before payment to said treasurer, he shall file with the board of trustees a bond, payable to the State of Indiana, in a sum not less than the full amount of the said money to be paid to him, and with security to be approved by said board of trustees, conditioned for the faithful and honest application of said money to the purpose for which the same was provided.

Sec. 3345. Tax to pay interest. 3. In addition to the levy of the tax by incorporated towns for general purposes, now authorized by law, the board of trustees of any incorporated town which shall avail themselves of the provisions of this act are hereby authorized and required to levy, annually, a special additional tax, at the same time and in the same manner as other taxes of such town are levied, sufficient to pay the interest of said bonds falling due; which additional special tax shall be assessed and collected as the taxes for state and county revenue are assessed and collected. And the treasurer of said town shall keep accurate accounts of the revenue arising from such special tax, and shall, in his reports, when required by the board of trustees, show the amount thereof, if any, remaining delinquent. He shall pay out the same only by the authority of the board of trustees of such town, and shall permit the same to be applied to no other purpose than the payment of the principal and interest of such bonds: *Provided, always*, That the additional special tax, hereby authorized, shall not, in any one year, exceed fifty cents on each one hundred dollars of taxable property and one dollar on each poll.

Treasurer's Bond.

We, ———, ———, ———, the undersigned, are jointly and severally bound to the State of Indiana in the sum of ——— dollars, subject to the following condition:

Whereas, the town of ———, of the State of Indiana, has issued bonds under an act of the general assembly of the State of Indiana, approved February 25, 1875, for the completion of an engine-house within said town, in the sum of ——— dollars, and the proceeds of the sales of said bonds are about to be paid to the treasurer, ———, of said town: Now if the said ——— shall faith-

fully and honestly apply all of said proceeds of said money that he may so receive to the purpose for which the same was provided, then this bond shall be void, else in full force and effect.

[Signed.]

Board's Approval of Bond.

Resolved, that the bond of ———, treasurer of this town, filed with the clerk of this town on the ——— day of ———, 18—, for the faithful and honest application of all money derived from the sale of bonds to complete the erection of the engine-house now in process of erection in this town, be and the same is hereby approved by this board; and the clerk is hereby directed to endorse upon it the approval of this board.

Approval.

Approved by order of the board of trustees of the town of ———.

L. X.,
Town Clerk.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3346. Fines. 23. Such board of trustees shall have power to enact fines, penalties, and forfeitures for violations of this act, or of any by-law or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered by an action in the name of the corporation. But such board may remit the whole or any part of the fine, penalty, or forfeiture: *Provided*, That the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license, although it may exceed the sum of ten dollars.

1. These fines are paid into the general fund of the town, and can be used for general purposes. They do not go to the school fund.

[1883, p. 132. Approved March 6, 1883, and in force June 5, 1883.]

Sec. 3347. Suits—Imprisonment. 57. Any person violating the provisions of any ordinance of a town organized under this act, to which there may be a penalty affixed, may be prosecuted before a justice of the peace of such town, and in case there be no acting justice therein, then before the justice of the peace residing nearest to said town, in the county in which such town is situated, upon a warrant issued by such justice, as in cases of misdemeanors, and such person, upon conviction, shall stand committed until the judgment and costs are paid or replevied, and in default of payment or replevy of such judgment and costs, the defendant, unless a female, may be adjudged and required to pay the same by manual labor upon the streets or other public works of said town, under the control of the marshal of said town, for which labor such defendant shall be allowed on such judgment and costs seventy-five cents per day. It shall be the duty of such marshal or such other officer as the board of trustees of such town may direct, to work such

defendant not less than six nor more than ten hours per day, according to the season, and each evening to return him to the custody of the keeper of the prison in whose custody such defendant was committed, and upon the full payment, as aforesaid, of such judgment, costs and accrued costs, such defendant shall be fully discharged. And such marshal is hereby authorized and required to perform all the duties herein prescribed, and to use all proper means thereto. And the board of trustees are hereby vested with full authority to pass by-laws and ordinances for compelling the enforcement of such manual labor by such defendant, by the use of sufficient force and means as they may deem right and proper. Such defendant may be committed to the town prison, or if such town has no prison, then to the county prison of the county in which such town is situated, and in the latter case it shall be the duty of such person having charge of such prison to receive such defendant and obey the judgment of the court in reference to him, and for the keeping, custody and boarding of said defendant, the keeper of such prison shall receive fifty cents per day, to be paid by such town on the presentation of an itemized account therefor, and he shall receive only one commitment and one discharging fee; and such defendant may, at any time, replevy and pay such judgment and costs. And in case he has performed labor under such judgment, he shall be entitled to a credit for the same to the amount of labor performed, and the balance may be paid or replevied as aforesaid. [El. Sup. § 830.]

1. The *warrant* may be issued to a constable or the town marshal, § 3066, *note* 1. All *defenses*, except the statute of limitation and matters in abatement, may be proved under the general denial, § 3066, *note* 5. *Proof* of passage of *ordinance*, see § 3066, *note* 8. *Appeal*, § 3066, *note* 9. *Trial on appeal*, § 3066, *note* 11. *Costs*, 3066, *note* 12. *Appeal to supreme court*, § 3066, *note* 13. *Damages*, § 3066, *note* 14. *Strangers*, § 3066, *note* 15. *Estoppel*, § 3066, *note* 16. *Construction* of ordinances, § 3066, *note* 18. *Jurors*, § 3066, *note* 19. *Process*, § 3066, *note* 21. Trial in *absence of defendant*, § 3066, *note* 21. *Instructing jury*, § 3066, *note* 20.

2. The board of county commissioners regulate the number of *justices of the peace*, being limited to three for each township, except where there is an incorporated town within the township, then they order an additional one to be elected, and when there is a city, two additional justices, R. S. 1881, § 1418. They may require a town or city justice to reside within the town or city for which their offices were created. They are all elected by the voters of the entire township, 28 Ind. 51. And if no justice resides within a town, upon petition of the board they may appoint a person justice for the town who resides therein, § 3347*a*.

3. A *prosecution* for the violation of a town ordinance may be instituted *before any justice* of the township residing within the corporate limits of the town, 28 Ind. 51; or it may be brought in the *circuit court* of the county, 29 Ind. 118; 73 Ind. 117. The *jurisdiction* of a justice is limited to two hundred dollars, 90 Ind. 258; R. S. 1881, § 1433.

4. Actions for the recovery of penalties for violation of town ordinances are *civil actions*, 73 Ind. 117; 90 Ind. 258; and the imprisonment for enforcing them is not in violation of the constitution, 95 Ind. 70. See § 3066, *note* 4.

5. The *complaint* is sufficient where it contains averments of the proper enactment of such ordinance, the violations of its provisions by the defendant, and the acts constituting such violation, 73 Ind. 117. It is not necessary to aver

that the members of the board of trustees which passed the ordinance were duly elected, nor that they had authority to pass the ordinance, nor that it had been published 95 Ind. 70; 25 Ind. 490. Merely filing as a complaint a copy of the section violated, unaided by averment, is not sufficient; and a judgment rendered thereon in favor of the town will be arrested, 79 Ind 183. Courts do not take *judicial notice* of town ordinances nor of their contents. Those sections violated *must be set out in the complaint*, or made exhibits, 118 Ind. 114; or the complaint will be insufficient. They can not be referred to by number and date of passage, as in cases of city ordinances. If more than one section is necessary to make out a complete offense, all such as are necessary must be set out; and merely setting out the section inflicting the penalty is not enough. The title of the ordinance need not be set out, 90 Ind. 258; 118 Ind. 114; 22 Ind. 192; 25 Ind. 490. If the section filed contains exceptions in favor of the defendant, these exceptions must be negative, 33 Ind. 507. But see § 3066, *note* 6. Perhaps the complaint will be defective for not stating the date of the passage of the ordinance, 33 Ind. 507. It is sufficient to allege that the board of trustees enacted the ordinance, 118 Ind. 103, 114. Alleging that the ordinance is "attached to and made a part of this complaint," is sufficient to make them exhibits, 118 Ind. 114. See § 3066, *note* 6.

6. The subject-matter of the ordinance need not be covered by the *title;* the clause of the constitution with reference to statutes in that respect not applying to ordinances, 25 Ind. 490.

7. A defendant can not *enjoin* the collection of a fine on the ground that no offense was charged in the complaint. The remedy is by appeal, 49 Ind. 329; § 3066, *note* 10.

8. The defendant can not assail the *validity* of the *election* of the trustees that passed the ordinance, 29 Ind. 118; § 3066, *note* 17.

9. Performance of a sufficient amount of work amounts to a payment of the judgment. There can be no work required upon the street unless there is a judgment to that effect, 64 Ind. 155. If there is no judgment to that effect the town marshal will be liable to the prisoner in an action for false imprisonment if he works him on the street, 67 Ind. 474. A prisoner may now be committed to the county workhouse under the proper judgment and be compelled to work, § 6232. The town must pay the expense of keeping him there, by a contract with the county, § 6232. If confined in the workhouse he is entitled to a credit of one dollar per day for each day he works, § 6239. Of course, if there confined, and no opportunity is allowed him to work, he will be entitled to a credit, for each day confined, of one dollar.

Complaint.

Before A. B., a Justice of the Peace of ——— Township.

The Town of ———, } Complaint for.....
vs. } No.....
L——— U———. } .....

State of Indiana, County of ———, ss:

The town of ——— complains of L——— U———, and says that on the ——— day of ———, 18—, at and in said county and State, and within the corporate limits of said town of ———, the said defendant, then and there being, did then and there [*Describe with reasonable certainty the act done or omitted that it is claimed to have been a violation of the town ordinance*], contrary to and in violation of section [*or*, sections] ——— of an ordinance of said town adopted by the board of trustees thereof on the ——— day of ———, 18—, a copy of which section is attached hereto and filed herewith marked "Exhibit A," and made a part hereof [*or*, is as follows, to wit: *Setting out the section*], to the damage of said town ——— dollars. Wherefore the plaintiff demands judgment for ——— dollars.

R——— Z———,
Attorney for the Plaintiff.

Z. R. being duly sworn, upon his oath says that the matters and things alleged in the foregoing complaint are true as he verily believes.

Z. R.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Notary Seal.]

X. L.,
Justice of the Peace,
[*or*, Notary Public.]

Warrant.

State of Indiana, ——— *County*, *ss*:

To any Constable of ——— *County* [or, *To the Marshal of the Town of* ———]. *Greeting*:

You are hereby commanded to arrest ———, and bring ——— forthwith before me at my office, to answer the charge of having, on the ——— day of ———, 18—, at and in said county and State, and within the jurisdiction of the town of ———, committed a violation of section ——— of an ordinance of said town adopted by the board of trustees thereof on the ——— day of ———, 18—, as said town has complained on the oath of one ———.

Dated this ——— day of ———, 18—.

L. X.,
Justice of the Peace.

Return.

I have arrested the above named defendant ———, and have ——— body now in court.

This ——— day of ———, 18—.

Fees. [*Give items.*]

Q. X.

Docket Entries.

The Town of ———,
vs.
L——— X———.
} No.....

On this ——— day of ——— 18—, A——— B———, said town's attorney, filed with me a complaint, verified by C. D., charging E. F. with a violation of section ——— of an ordinance of said town passed and adopted by the board of town trustees thereof on the ——— day of ———, 18—, by [*unlawfully firing a pistol within the limits of said city.*]

Whereupon I issued a warrant and delivered the same to X. L., the marshal of said town, commanding him to forthwith arrest the said E. F., and bring him before me at my office. And I also issued a subpœna for H. B., J. S., and S. B., to testify in behalf of said town.

And afterwards, to wit, on the same day, said marshal returned the warrant, with his doings indorsed thereon as follows:

Come to hand this ——— day of ———, 18—, at ——— a. m., and I have executed the same by arresting the within named defendant, and now have his body before the court.

Fees. [*Give items.*]

X. L.,
Marshal.

And he also returned said subpœna indorsed as follows:

Served by reading to and within hearing of the within named witnesses.

X. L.,
Marshal.

The defendant, being in court, ordered a subpœna for E. B. to testify in his behalf, which was issued and delivered to said marshal, and was afterward returned indorsed as follows:

Served by reading to and within the hearing of the within named E. B.

Fees. [*Give items.*]

X. L.,
Marshal.

Now, at this time comes W. R. J., said town's attorney, and the defendant and all the witnesses being present, this matter is submitted to the court upon the testimony of sworn witnesses, and the court having heard the evidence, and being fully advised in the premises, finds that the defendant is guilty as charged in the complaint; and it is, therefore, considered by the court that the defendant forfeit and pay to said town the sum of ——— dollars, together with costs taxed at ——— dollars ——— cents, and that he stand committed until said judgment and costs be paid or replevied.

It is further adjudged by the court that if said judgment be not so paid or replevied, the defendant shall be required to pay the same at manual labor on the streets or other public works of the said city, under the control of the street commissioner, at seventy-five cents per day, [*or, in case the town has a work-house, or there is one in the county*, and if said fine is not paid or replevied forthwith, that said defendant be committed to the town [*or*, county] work-house of the county of ———, of the State of Indiana, and that he be required to pay the same by manual labor in said work-house at the rate of seventy-five cents per day, *or, if in the county work-house*, at the rate of one dollar per day.]

[1891, p. 33. Approved and in force February 26, 1891.]

SEC. 3347*a*. Justice of peace for town. 1. Where a town has been incorporated and there is no justice of the peace resident within the corporate limits of such town, the board of county commissioners of the county in which such incorporated town is situated, shall, upon the petition of a majority of the board of trustees of such incorporated town appoint a justice of the peace, who shall reside and hold his office in such incorporated town. Said board of county commissioners shall certify to the governor of the State to such appointment and upon the receipt of such certificate of such appointment the governor shall commission such person so appointed as justice of the peace. Said justice shall hold his office until his successor is elected and qualified.

See § 3347, *note* 1.

Petition.

To the Honorable Board of Commissioners of the County of ———:

The undersigned, trustees of the town of ———, State of Indiana, hereby pray that your honorable board will appoint a justice of peace who shall reside and hold his office in said town.

Dated ———, 18—.

A. B.,
C. D.,
E. F.,
Trustees.

ARTICLE 3—TAXATION.

SEC.
3348. Annual tax, when fixed.
3349. Tax levy.
3350. Warrant for collection.
3351. Tax, how collected.
3352. Redemption of real estate.
3353. Duplicate to auditor.
3354. County treasurer to collect.
3355. Road tax.
3356. Levy of road tax.

[1855, p. 130. Approved March 3, 1855, and in force August 17, 1855.]

SEC. 3348. Annual tax, when fixed. 30. The board of trustees shall, before the third Tuesday in May of each year after the town shall have been incorporated, determine the amount of general tax

for the current year; but the tax for the year in which the town is incorporated may be determined, at any time, by the board of trustees.

1. In the making of assessment of taxes and the sale of lands and property for taxes, towns are now governed by the *general tax law* so far as applicable, see § 3263. The office of *assessor* is abolished, § 3262; *unplatted lands*, § 3261; *bank stock*, § 3254; *power* to tax and *exemption*, § 3156, *note* 7; *illegal assessment*, § 3156, *note* 8; *bonds of United States*, § 3156, *note* 9; *capital stock*, § 3156, *note* 10; *railroads*, § 3156, *note* 11; person *moving into* town, § 3156, *note* 13; *road tax*, § 3156*a*.

2. This section is *constitutional*, 44 Ind. 83. See 40 Ind. 491; 11 Ind. 139; 27 Ind. 332; 22 Ind. 204; 48 Ind. 568.

3. The word "*determine*" means to "assess and levy," and the *time of making the levy* is now changed by § 3262 until after the county board of review has acted upon the tax assessment, 82 Ind. 493; 104 Ind. 363. Formerly, the levy could not be made after the third Tuesday in May, 44 Ind. 83; 14 Ind. 306; but now the levy may be made within a reasonable time after the adjournment of the county board of review, 104 Ind. 363.

4. Where the owner of personal property, which belongs elsewhere, resides in a town, such personal property can not be taxed by such town. The *situs* of personal property, for the purpose of taxation, does not follow the domicile of the owner, 92 Ind. 222. The personal property of a person who is not a resident of the town, at a railroad station awaiting shipment to the residence of the owner, can not be taxed by the town, 89 Ind. 1; (see 27 Ind. 388; 21 Ind. 335.) Property collected from one or more points, by means of transportation, awaiting the necessary preparation and facilities for further transportation is in transit while so detained, and can not be taxed by the town in which it is situated; but if it is there to await indefinitely the owner's pleasure or the rise of markets, or to undergo a partial process of manufacture, or from any other cause having no relation to the preparation for or facilities or exigencies of transportation, it may be taxed by such town, 103 Ind. 302.

5. Thus, staves purchased by a citizen of another State, remaining in a town of this State to receive a finishing process before shipment to another State, may be taxed by the town. Such a tax is constitutional, 96 Ind. 179. But *money*, wherever it may be, owned by a resident of a town on the first day of April, where between then and the first day of June he becomes a resident of such town, is taxable for that year by such town, 108 Ind. 353. So where two members of a firm of three owned *water-craft*, resided in town P., of this State, the property being kept at a harbor two miles beyond the town, and the third partner resided in another town, it was held that such craft could be taxed by the town P., 106 Ind. 170. But this has been changed by statute. See § 6293.

6. The collection of taxes can not be enjoined on the ground that there was no valid survey and incorporation of the town, especially where the town has exercised jurisdiction over the land taxed for a long period of years, 82 Ind. 493.

[1 R. S. 1852, p. 482. Approved and in force May 6, 1853.]

SEC. 3349. Tax levy. 33. When the assessment-roll shall have been corrected and completed, the trustees shall levy a tax upon the taxable property of said town to such an amount as they may deem necessary, and shall set opposite the name of each person taxed a description and valuation of the property charged therewith, and the amount of tax assessed against such person. And when such tax-list shall have been made, they shall cause a copy thereof, with a warrant annexed, to be delivered to the marshal of such town. The original assessment-roll and tax-list shall be deposited with the treasurer of such town, who is hereby charged with the safe custody of the same.

1. When collected by the county treasurer, the taxes are put upon the county duplicate, in installments, in columns marked "town taxes," the town being named. When collected by the town marshal, they are collected in installments, in conformity to the general state law, as provided by § 3263. The assessment-roll should be made out as a tax duplicate is made out. Quite a diversity exists in the collection of town taxes in installments, some towns collect in one and some in two; but it is clear that the latter method is the correct one.

Sec. 3350. Warrant for collection. 34. Such warrant shall be under the seal of the corporation, signed by the president and trustees, or a majority of them, and attested by the clerk, and shall command the marshal to collect the taxes specified in the duplicate within ninety days, and pay over the same, and make return of said warrant to the treasurer of said town. Such trustees may renew such warrant for any period not exceeding thirty days.

Warrant.

State of Indiana, County of ———, *ss.*

The Town of ———, *to A. B., Greeting:*

You, as marshal of said town, are hereby commanded out of the goods and chattels of each and every person named in the within and annexed tax duplicate, and of each and every person whose name may hereafter be lawfully added thereto, either by the clerk of said town or by yourself, to cause to be made, by distress and sale, if necessary, the amount of tax charged against each and every of said persons named in the annexed duplicate, and of each and every person whose name is hereafter lawfully entered thereon, and pay the amount paid over to the treasurer of this town; and make report of your doings in the premises to this board by the third Monday in April next; and make a full return and report, and final settlement thereof, by the first Monday in November, 18—. And this shall be a full authority to you in said premises.

Witness our hands and the seal of said town this ——— day of ——— 18—.

[Town Seal.]

A. B.,
C. D.,
E. F.,
Trustees of the Town of ———.

Sec. 3351. Tax, how collected. 35. The marshal shall collect the taxes on said duplicate when so required, and shall have the same power to enforce collections and shall be governed by the same rules and regulations as county treasurers and county auditors; and shall have authority, in like manner, to collect by distress and sale, and to make conveyances and certificates of real estate sold by virtue of such sale. Such sale, if at a county-seat shall be at the door of the court-house or place of holding court; and, if not at the county-seat, it shall be held at the door of the town-hall or place of meeting of the board of trustees; and the clerk of said board shall perform the like duties, at said sale, as are required of the county auditor at a sale for state and county taxes; and all deeds or conveyances for lands so sold for taxes shall be *prima facie* evidence of the validity of such purchase.

1. A sale of lands for taxes, at *private sale*, by the marshal of an incorporated town, was held void, 70 Ind. 536. The law authorizing private sales has now been abolished.

2. *Money* paid at a tax sale can not be *recovered* from the town on the ground that the *sale* is *void*, if the taxes for which the land was sold were due, 110 Ind. 208.

3. Towns are now governed by the *general tax law* so far as applicable, § 3263. See §§ 6424 to 6445 on *collection* of taxes; § 6446 on *liens* and *payment* of taxes; §§ 6457 to 6465 on *sales of realty;* § 6457 for *delinquent list;* § 6457 for *advertisement;* certificate of sale, § 6464 and § 3091; tax deed, § 6479 to 6490. The clerk executes the tax deed.

Sec. 3352. Redemption of real estate. 36. Any real estate sold by virtue of this act shall be redeemable under the same regulations and restrictions as real estate sold for county and state taxes is made redeemable. All moneys for the redemption of such real estate shall be paid to the treasurer of the corporation.

See §§ 6466 to 6478.

Sec. 3353. Duplicate to auditor. 37. The trustees of such town may, at their option, deliver the tax duplicate to the auditor of the proper county, on or before the first day of August in each year, instead of to the marshal of such town; and said auditor shall enter said tax, and, if delinquent, the interest and penalty thereon, upon his duplicate.

Sec. 3354. County treasurer to collect. 38. The treasurer of such county shall collect the corporation taxes upon such duplicate as other taxes are collected, and pay the same over to the treasurer of such corporation. The auditor and treasurer shall be allowed and paid by the corporation the same compensation as is paid by the county for like services.

The county auditor and county treasurer sell lands delinquent for town taxes when such treasurer collects the town tax, the same as other taxes, changing the usual forms so as to show that the sale is for town taxes.

Sec. 3355. Road tax. 47. Nothing contained in this act shall exempt the inhabitants of any town from the payment of highway taxes legally assessed, nor from the formation of one or more road districts irrespective of the corporate limits of such town.

1. A road tax for township purposes might formerly be collected on property within an incorporated town situated in the township where levied, 41 Ind. 580. But all this has now been changed by § 3156*a;* and the inhabitants can not now be required to pay or work out a township road tax. So far as this section conflicts with § 3367 it is repealed, 65 Ind. 404.

[1881 S., p. 708. Approved and in force March 25, 1881.]

Sec. 3356. Levy of road tax. 2. The town trustees shall have power to levy a road tax not to exceed twenty-five cents on the one hundred dollars' taxable property within such corporation, in addition to the powers now conferred upon them by law for the levy and collection of taxes: *Provided,* That the board of commissioners or township trustees shall have no power or authority to levy a road tax on any property within the corporate limits of such town.

See § 3156*a*, and § 3355, *note.*

ARTICLE 4—IMPROVEMENT OF STREETS.

SEC.		SEC	
3357.	Sidewalks.	3362.	Misdemeanor.
3358.	Requisites of sidewalk ordinance.	3363.	Street improvement.
3359.	Owner failing, town makes.	3364.	Street improvement.
3360.	Cost, how recovered.	3365.	Cost, how apportioned.
3361.	Driving on sidewalk.	3366.	Cost, how collected.

[1859, p. 184. Approved and in force February 14, 1859.]

SEC. 3357. Sidewalks. 1. Whenever, in the opinion of the board of trustees of any incorporated town in this State, public convenience requires that the sidewalks of any street in such town should be graded or paved or planked, such board of trustees may, by an ordinance, compel the owners of lots adjoining such street to grade, pave, or plank the same.

1. See § 3333, clause 9. This and the following four sections are not repealed by § 3364 and the sections following it. 114 Ind. 371. Sidewalks may be built under § 3364 and the sections following. This section does not apply to the improvement of streets, 114 Ind. 371.

2. The board of trustees are the *exclusive judge of the necessity* of improving the sidewalks of a town. 120 Ind. 185; 127 Ind. 130; 63 Ind. 262. *Prohibition* does not lie to prevent the execution of a contract with the town for building a sidewalk; *injunction* is the proper remedy, if there be any, 63 Ind. 262. The fact that the land along which it is desired to build a sidewalk is *agricultural land*, however much it may be, is no reason why the courts should restrain its construction, 63 Ind. 262; the statute on the taxation of agricultural land within a town not applying, 34 Ind. 497. Nor is the *intention of the owner* thereof to build the walk at the time the ordinance requiring its construction is passed any reason for restraining the town, especially if the town has no notice of his intention, 63 Ind. 262. In an action to enjoin a town in constructing a sidewalk the courts will *presume* that all necessary ordinances were duly passed for the construction of such sidewalk, 63 Ind. 262; 34 Ind. 497. Under this section no *petition* is necessary, 49 Ind. 322 (distinguishing 35 Ind. 532); 127 Ind. 130.

3. If the owner of the property stands by and, without objection, permits improvements to be made which benefit his property, he is *estopped* to afterward deny the authority of the town to make improvements, 120 Ind. 185. See § 3163, *note* 13. But mere silence and a failure to object and prevent the improvement will not estop him to contest the assessment against him, made without contract. In such an instance the contractor will not be heard to allege that the lot-owner accepted the work; for that he can not do, only the town trustees having authority to do that, 79 Ind. 137.

4. The board are not prevented from changing the width of a space of a street previously paved by the fact that they had paved it to that width, and they may narrow the sidewalk, to which action the adjoining lot-owner can not object unless he sustains irreparable injury, 127 Ind. 130; S. C. 26 N. E. Rep. 676.

5. Under this section the board have no power to *repair* the sidewalk at the expense of the abutting lot-owners; but when the sidewalk becomes for its entire length unfit for travel they may order it regraded and re-improved, or simply re-improved. Repairing must be done under § 3363, 127 Ind. 130; S. C. 26 N. E. Rep. 676.

SEC. 3358. Requisites of sidewalk ordinance. 2. Such ordinance shall specify the height of the grade, if the grade of any such sidewalk is to be altered, the width of such pavement, and the time when the same shall be done.

The ordinance establishing grades is not *void* for *uncertainty*, if the grades so established can be ascertained without difficulty, 49 Ind. 322. But such an ordinance must be published at least ten days (§ 3333, clause 16), or have an emergency clause to protect a contractor against a suit for the damages occasioned to his lot by reason of the improvement of the street in accordance with its provisions. Until then it is not in force; and every one acting under it is liable to the lot-owner for whatever damages he may suffer, 108 Ind. 208.

Ordinance.

SEC. 1. Be it ordained by the board of trustees of the town of ———, that the sidewalk on the north side of that part of Lincoln avenue lying between Pratt and Grant streets be graded and paved at the expense of the owners of lots which abut thereon.

SEC. 2. Said sidewalk shall be constructed six inches above the present established grade of said Lincoln avenue, of hard paving brick laid on twelve inches of sand, and to a width of five feet [*or*, said sidewalk shall be constructed upon the following grade, to wit: Taking as the initial point the top of a stone marked with a cross, standing at the northwest corner of said Lincoln avenue and Pratt street, and from thence east to the northeast corner of said Lincoln avenue and Grant street, on a descent of three and eighty-hundredths feet; grade per rod, two and seventeen-hundredths inches. The same shall be planked to a width of five feet with two-inch new oak lumber, free from rot, laid on three stringers, each four by four inches], to the satisfaction of the town civil engineer.

SEC. 3. If the owner of any lot abutting upon said sidewalk shall fail to grade and pave [*or*, plank] the same within thirty days from the passage of this ordinance, then it shall be the duty of the town marshal to let out so much of the grading and paving [*or*, planking] thereof as abuts upon such owner's lot to the lowest bidder, first giving ten days' notice by posting up written notices thereof in three public places in said town for that length of time; and when said grading and paving [*or*, planking] is done, said marshal shall report the cost thereof to this board, and the expense thereof shall be paid out of the treasury of the town.

SEC. 4. This ordinance shall be in force from and after its publication in the Covington *Weekly Argus* for a period of ten days [*or*, from and after it has been posted for a period of ten days in five public places within said town; *or*, there existing an emergency, owing to the bad condition said sidewalk is now in, for the immediate taking effect of this ordinance, the same shall be in force from and after its passage.]

Ordinance Establishing Grade for Town.

SEC. 1. Be it ordained by the board of trustees of the town of ———, that the grade of the several streets of said town, herein below named and specified, be and is hereby declared, defined and established as follows, viz.: Initial point of said grade shall be the top of a stone marked with a cross and standing near the southwest corner of Main and Broad streets in said town; from said initial point west to the northeast corner of Broad and Court streets, twenty-one rods, a descent of three and thirty-hundredths feet, a grade per rod of two and seventeen-hundredths inches. From the northeast corner of Main and Broad streets west to the corner of Broad and Elm streets, distance twenty-one rods, descent two and seventy-hundredths feet, grade per rod one and fifty-four hundredths inches, *etc.*

SEC. 2. All sidewalks, pavements, crossings and gutters hereafter built, laid or constructed along or upon said streets, shall be made with reference to and in strict accordance with the grades hereinbefore established.

SEC. 3. Whereas, there exists an emergency for the immediate taking effect of this ordinance, the same shall be in force from and after its passage.

[See 49 Ind. 322.]

Sec 3359. Owner failing, town makes. 3. If the owner of such lots shall fail or refuse to grade, pave, or plank such sidewalk, as required in such ordinance, it shall be the duty of the marshal of such town forthwith to let out the grading, paving, or planking of such sidewalk to the lowest bidder, first giving ten days' notice, by posting up written notices thereof in three public places in such town for that length of time. And when such grading, paving, or planking is completed, said marshal shall report the same to said board of trustees, and the cost of such work shall be audited and paid out of the treasury of such town as other claims against said corporation are audited and paid.

The reasonable costs incident to letting the contract may be included in the foreclosure of the lien, if there be any; but the marshal is not entitled to any pay for his services in the premise.

Advertisement for Bids to Improve Sidewalks.

Notice is hereby given that I will receive sealed bids up to 4 p. m. on the ——— day of ———, 18—, at the office of the clerk of the town of ———, of the State of Indiana, for the grading and paving [*or*, planking] of so much of the sidewalk in front of Lot 16 of Kohl's addition to said town, on Lincoln avenue, according to the provisions of the ordinance adopted by the board of trustees of said town on the ——— day of ———, 18—. Said grading and paving [*or*, planking] to be completed within thirty days after the awarding of the contract, and to the satisfaction of the town civil engineer; and to be awarded to the lowest and best bidder. I hereby reserve the right to reject any and all bids.

Dated ———, 18—.

A. X.,
Marshal of the Town of ———.

Bid.

———, Ind., ———, 18—.

To A. X., Marshal of the Town of ———:

Sir: The undersigned proposes to grade and pave [*or*, plank] so much of the sidewalk as lies in front of Lot 16 of Kohl's addition to said town, on Lincoln avenue, according to the provisions of the ordinance adopted by the board of trustees of said town on the ——— day of ———, 18—, for the grading and paving [*or*, planking] of the sidewalk on the north side of Lincoln avenue, from Pratt to Grant streets, for ——— dollars [*or*, ——— dollars and ——— cents per lineal foot].

A. B.,
Contractor.

Contract.

This agreement, made and entered into this ——— day of ———, 18—, by and between A. B., of ——— county, and State of Indiana, and the town of ———, of said county and State, witnesseth that said A. B. covenants and agrees to grade to a height of six inches above the established grade of the adjacent avenue, and pave to a width of five feet, with good and hard paving brick, laid on twelve inches of sand, so much of the sidewalk on the north side of Lincoln avenue as abuts upon lot 16 of Kohl's addition to said town, at and for the price of ——— dollars [*or*, ——— dollars and ——— cents per lineal foot.] Said sidewalk shall be completed by the ——— day of ———, 18—, and in accordance to the terms of an ordinance passed by the board of trustees of said town on the ——— day of ———, 18—, for the grading and paving of so much of the sidewalk on said Lincoln avenue as lies between Pratt and Grant streets, and to the acceptance of the town civil engineer. Said A. B. covenants

and agrees that he will exercise, in the prosecution of said work, all proper skill and care; that he will properly and fully guard and protect all excavations, or dangerous places, and will use all due and proper care to prevent injury to any property, person or persons whatever; and that he will omit no reasonable precaution which will tend to the security of all persons and property. Said A. B. further covenants and agrees to supply all earth required to complete the necessary grading, and if a surplus, to remove the same to some street or alley, not exceeding a distance of half a mile, as shall be directed by the town civil engineer, and spread the same to his satisfaction. [The said A. B. further agrees to maintain said work and keep it in good repair, to the entire satisfaction of said engineer, for a period of ——— years from the date of completion thereof, without cost to the town or the owner of said lot; and if at any time during said period said work, or any part thereof, shall, in the opinion of said engineer, require repairing, said A. B. shall, upon notice from said engineer, immediately make such repairs; and in case of failure to make the same within ten days from service of such notice the town shall have the right to purchase such materials as it shall deem necessary, and employ such persons as it may deem proper, and to undertake and complete said repairs, and collect the costs thereof from said A. B. and sureties, jointly and severally.] If said work be not finished by the time specified, and according to the above specifications, then this contract shall be void and of no effect in law, and said town shall have the privilege and option of forfeiting this contract and reletting said work; and said A. B. shall be liable for all damages that may accrue by said failure to perform said work according to this contract; and unless said work shall be done within the time specified, said A. B. shall not recover for any part of the work done under this contract.

In testimony whereof, said town of ———, by A. X., its marshal, and said A. B., have hereunto set their hands this ——— day of ———, 18—.

THE TOWN OF ———,
BY A. X.,
Town Marshal.
A. B.,
Contractor.

[If the town desires to take advantage of the contractor's failure to comply with the contract, the board of trustees should enter in the town record a declaration that the contract is forfeited; and the marshal should be ordered to advertise and relet the work.]

Bond.

Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, of the county of ———, and State of Indiana, are held and firmly bound to the town of ———, Indiana, in the sum of ——— dollars, for the payment of which, well and truly to be made, we jointly and severally bind ourselves firmly by these presents.

The conditions of the above obligation are such, that if the above bound A. B. shall faithfully comply with the foregoing contract, made and entered into this ——— day of———, 18—, with the town of ———, Indiana, and fulfill all the conditions and stipulations therein contained, according to the true intent and meaning thereof in all respects, then this obligation shall be void; otherwise to be and to remain in full force and virtue in law; and in the event said town shall extend the time for the completion of said work, such extension shall not in any way operate to release the sureties on this bond.

Witness our hands and seals this ——— day of ———, 18—.

A. B., [Seal.]
C. D., [Seal.]
E. F. [Seal.]

Marshal's Report.

To the Board of Trustees of the Town of ———:

I hereby report that, after notice having been duly given, I let the contract for the grading and paving [*or*, planking] of so much of the sidewalk on the north side of Lincoln avenue as abuts upon lot 16 of Kohl's addition to said town to

R. U., he being the best and lowest bidder; and said R. U. in all things has performed his contract for such grading and paving [*or* planking]. The amount due him thereon, according to his bid, is ——— dollars and —— cents.

L. X.,
Marshal.

Sec. 3360. Cost, how recovered. 4. Such board of trustees may immediately, by a suit in any court of competent jurisdiction, in the name of such corporation, recover against the owner of such lot the amount of the cost of paving or planking and grading such sidewalk; and upon execution against the property of said defendant upon such judgment, the same shall be sold for cash without regard to the valuation and appraisement laws of this State. And from the date of the completion of such pavement or planking or grading under contract by the marshal, the costs of such grading and paving or planking, and the damages aforesaid, shall be a lien on such lot, and may be enforced in any court of competent jurisdiction, by an action in the name of such corporation.

1. There is no *personal liability* under this and the three preceding sections; a lien only against the lot improved. The *action* may be *commenced* as soon as the *work is done*, and even before payment by the town; for a liability to pay, in a case of this kind, is sufficient to authorize the bringing of the action. The *lien* does not attach until the work is completed. The action must be brought in the circuit or a superior *court* of the county wherein the land lies. If the land has been *conveyed* by the owner after the work has been commenced and before suit brought, only the purchaser need be made defendant; and if the vendor is made a *party* he can successfully demur for want of facts as to himself.

2. Averring that the work has been "duly completed" is a sufficient averment that the walk has been completed in accordance with the specifications of the ordinance. The ordinance need and can not be made a part of the complaint as an *exhibit*, 77 Ind. 126.

3. Contractors can be compelled to satisfy the records establishing a lien when they have been paid. This must be done by an ordinance, § 3229*i*.

Complaint.

In the ——— Circuit Court.

The Town of ———, vs. A——— B———. *No. ———.*

The town of ——— complains of A. B. and says: That on the ——— day of ——— 18—, the board of trustees of said town, by a resolution and ordinance duly adopted, directed and ordered that the sidewalk on the north side of Lincoln avenue, between Pratt and Grant streets, be graded to a height of six inches above the then established grade of said avenue, and that it be paved to a width of five feet with hard paving brick laid on twelve inches of sand. By the terms of said resolution, due notice of which was given by the marshal of said town to said A. B. immediately after the passage thereof by said board, said grading and paving was required to be completed within thirty days thereafter. That said A. B. was then and is now the owner of lot 16 of Kohl's addition to said town, which lot abutted upon said sidewalk. That said A. B. failed to grade and pave said sidewalk within said thirty days, or at any time whatever; and in pursuance of the provisions of said resolution and ordinance, and the statutes in such case made and provided, the marshal of said town, after ten days' notice, by posting up written notices thereof in three public places in said town for that length of time, let out the grading and paving of so much of said sidewalk as abutted upon said lot 16, to R. L., he being then and there the lowest and best bidder, at and for the sum of ——— dollars and ——— cents. That said R. L. immediately entered into a contract with said town for the performance of said work; and in pursuance of said contract completed said

work to the acceptance of the duly authorized civil engineer of said town on the ——— day of ———, 18—, which was also duly accepted by the board of trustees of said town, and the contract price therefor, to wit: $———, was duly allowed and paid by said town before the bringing of this action. That said amount, to wit: $———, is now due and wholly unpaid.

Wherefore the plaintiff prays judgment for $———, the foreclosure of the lien upon said lot created by reason of the completion of said work; and that said lot be ordered sold for the payment of the amount of said contract and all cost and accruing cost.

R. U.,
Attorney for Plaintiff.

[1867, p. 194. Approved and in force March 9, 1867.]

Sec. 3361. Driving on sidewalk. 1. It shall be unlawful for any person to ride or drive upon the brick, stone, plank, or gravel sidewalk of any town or village, or upon any similar sidewalk for the use of foot-passengers by the side of any public highway in this State, unless in the necessary act of crossing the same.

[1859, p. 185. Approved March 3, 1859, and in force August 6, 1859.]

Sec. 3362. Misdemeanor. 3. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding three dollars.

1. This is a state or *criminal prosecution;* and an offender may be prosecuted before any justice of the peace of the county or in the circuit court by information or indictment.

2. It is unlawful to ride a *bicycle* on the sidewalk of a town or city; and if so used the rider is liable civilly for an injury inflicted upon a footman, although the act be unintentional, 117 Ind. 450; 120 Ind. 46.

Affidavit.

The State of Indiana vs. A——— B———. No. ——.

C. D., being duly sworn, upon his oath says, that said A. B. did, on the ——— day of ———, 18—, within the county of ———, and State of Indiana, unlawfully drive a two-horse wagon, then and there drawn by two horses, over the brick sidewalk situated on the north side of Lincoln avenue, and within the corporate town of ———, of the county and State aforesaid, he, the said A. B., not then and there being in the necessary act of crossing said sidewalk; contrary to the statute in such case made and provided.

C. D.

Subscribed and sworn to before me this ——— day of ———, 18—.

L. X.,
Justice of the Peace.

[1857, p. 73. Approved and in force March 5, 1857.]

Sec. 3363. Street improvement. 46. Whenever two-thirds of all the resident owners, in number or in value, of real estate, bounding both sides of any street, not less than one square, shall petition to have such street or sidewalks connected therewith graded, paved, or otherwise improved, or the sidewalks thereof built or repaired; or when two-thirds of the owners of real estate, in number or in value, on one side of such street, shall desire a

sidewalk on that side, it shall be the duty of such board to levy and cause to be collected by tax upon all the owners of all real estate or lots on such street or part of a street, or such side of a street, according to the last appraised valuation of said real estate, exclusive of any improvement that may be made thereon, such sum of money as is necessary for the improvement of said street or sidewalk as in said petition requested. At the time of making such levy, said board shall fix the nature, extent, and specifications of the proposed improvement. And any person upon whose real estate any such tax is levied may satisfy the same, or any part thereof by labor done and materials furnished for the proposed improvement, under the direction and to the acceptance of said board. If any person against whose real estate a tax shall be levied for the purpose of building or repairing a sidewalk shall have previously built a sidewalk adjoining to the whole of the real estate so taxed, to the acceptance of the board, or shall afterward build or repair the same within the time prescribed by said board and to their acceptance, it shall be a full discharge of such tax for the improvement of such sidewalk.

1. *Non-resident* owners can not sign this petition, but their property must be considered in estimating whether the requisite number or value is represented on the petition. The tax is collectible as soon as levied, even before any part of the work is performed. The ordinance should contain the amount of tax chargeable to each land-owner; and such tax is collected the same as ordinary taxes, except that it is payable forthwith, unless otherwise specified in the ordinance. The grading and graveling, etc., is performed by the town; or it may let it out by contract. In the latter event the board can advertise for sealed bids and award the contract, each step of which proceeding should be duly noted in the journal.

2. Under this section a petition is necessary; but the board may determine the grade, the width to which it shall be improved, and in otherwise adopting specifications for the work. It is only under this section that the town can *repair* a street or sidewalk at the expense of the abutting land-owner; but such repairs may be made and paid for by it out of the general fund of the town, 127 Ind. 130; S. C. 26 N. E. Rep. 676.

Petition.

(According to length.)

To the Board of Trustees of the Town of ———:

The undersigned, two-thirds in number of all the resident owners of said town, of all the real estate bounding on both sides of so much of Grant street as lies between Seward and Stanton streets of said town, not less than one square in length and a distance of 1,000 feet, ask that so much of the roadway of said Grant street be graded and graveled, and that you cause a tax to be levied upon and collected from all the owners of all real estate on said part of said street to pay the cost of said improvement.

Names of Resident Owners.	No. of Lot.	Addition.	No. Feet Front.

Petition.

(According to value.)

To the Board of Trustees of the Town of ———:

The undersigned, two-thirds in value of all the resident owners, of said town, of all the real estate bounding on both sides of so much of Grant street as lies between Seward and Stanton streets of said town, not less than one square in length and of the value of ——— dollars, ask that so much of said Grant street be graded and graveled, and that you cause a tax to be levied upon and collected from all the owners of all real estate on said part of said street, to pay the cost of said improvement.

Name of Resident Owner.	No. of Lot.	Value Exclusive of Improvement.

Petition for Sidewalk.

To the Board of Trustees of the Town of ———:

The undersigned, two-thirds in number of the owners of said town of all the real estate bounding and abutting upon so much of the south side of Grant street of said town, as lies between Seward and Stanton streets thereof, not less than one square in length and a distance of 1,000 feet, ask that the sidewalk on the said south side, between said Seward and Stanton streets, be graded and paved to a width of five feet with paving brick and that you cause a tax to be levied upon and collected from all the owners of all real estate which abuts upon said south part of said street, to pay the cost of said improvement.

Name of Resident Owner.	No. Lot.	Addition.	No. Ft. Front.

Ordinance.

Whereas, A. B. and others, two-thirds in number of all the owners, who are residents of this town of ——— of all the real estate bounding and abutting upon both sides of so much of Grant street as lies between Seward and Stanton streets, have petitioned the board of trustees of said town to have that part of Grant street above described, graded and graveled, and to levy upon and to cause to be collected a tax from the owner of so much of the real estate as abuts upon such part of Grant street; and,

Whereas, the cost of grading and graveling such part of Grant street will be ——— dollars and ——— cents; therefore

SEC. 1. Be it ordained by the board of trustees of the town of———, that so much of Grant street of said town as lies between Seward and Stanton streets, be graded according to the stakes set by the town civil engineer, on the following grade, to wit: Beginning at station ———, etc.; and that the roadway be graveled to a width of ——— feet, and to a depth of ——— inches in the center, sloping to ——— inches at the sides, with the best quality of raked, river or ——— creek gravel. All work to be done to the entire satisfaction of the town civil engineer.

SEC. 2. Be it further ordained that a tax of ——— cents for each dollar of the appraised valuation of all real estate abutting upon the part aforesaid of

said Grant street, exclusive of any improvement that may be made thereon, be and the same is hereby levied according to the following schedule, viz.:

Name of Owner.	Description of Property.	Valuation.	Amount of Tax.

SEC. 3. Whereas, an emergency exists for the immediate taking effect of this act, the same shall be in force from and after its passage.

[1869 S., p. 633. Approved and in force April 27, 1869.]

SEC. 3364. Street improvement. 8. Whenever a majority of all the resident owners of any lots or parcels of land on any street or alley, not less than one square (to be estimated by numbers or by measuring the front lines of such lots or parcels of land bordering thereon) shall petition the board of trustees of such town to grade, pave, gravel, or macadamize, or for either kind of said improvement, the board of trustees may cause the same to be done according to the specifications by them to be adopted, by contract given to the best bidder, after advertising to receive proposals therefor: *Provided,* That the said board of trustees may order the improvement as aforesaid of any street around the public square in such town without the filing of such petition; and when the county in which such town is situate owns or controls real estate bordering on such public square, it shall be subject to the same rules and regulations as to payment for said improvement as the citizens of said town are subjected.

NECESSARY PROCEEDINGS IN THEIR ORDER.

The following steps are necessary in the order designated:

1. Petition of a majority of all the resident owners of the lots or tracts of land, not less than one square, to be estimated by numbers or by measuring the front lines of their lots or tracts of land bordering on the street to be improved, § 3364.

2. Order for work, setting out to the specifications in the resolution, § 3364.

3. Advertisement for proposals, acceptance of bid and execution of a contract. The order, advertisement, written bid, and acceptance of record may constitute the contract, § 3364.

4. Estimate of cost and apportionment to the lots or tracts according to number of feet each lot or tract borders on the improvement, § 3365, which estimates are a lien on the lot, § 3365.

5. Enforcement of payment, by the contractor, by suit in the circuit court, § 3366.

NOTES.

1. A *resolution* is sufficient; an ordinance is not required, § 3162, *note* 4; sufficiency of resolution, § 3162, *note* 4; *optional* with board to order improvement, § 3162, *note* 5; reimproving, § 3162, *note* 5; *patent process*, § 3162, *note* 7; *railroad*, § 3162, *note* 11; *cemetery*, § 3162, *note* 12; *street railroad*, § 3162, *note* 13; statute *strictly construed*, § 3162, *note* 15; *bids*, §3162, *note* 16; *dirt*, § 3162, *note* 17.

2. This section does not *repeal* §§ 3357 to 3360. Under this section *sidewalks* may be improved. The term "street" includes sidewalk, 114 Ind. 371, and upon a petition for the improvement of a street the board may order both the driveway and sidewalks adjacent improved, 114 Ind. 371.

3. The board of town trustees acquire jurisdiction of the improvement of a street within the town only where a *majority* of all the owners of the lots or parcels of land abutting on the street, residing within the town, shall *petition* them for such improvement, 91 Ind. 477. A resolution without a petition sufficiently signed has been held void, 35 Ind. 532. But see 125 Ind. 407. Under such circumstances, where the work was in progress and was a damage and not a benefit to the citizens of the town, it was held that a resident tax-payer of the town may, for himself and others of like interest, enjoin the prosecution of the work, 35 Ind. 532.

4. A member of the board of trustees can not take the contract for improving the street; if he does, the contract is void, and he can not recover for the work performed, 91 Ind. 477.

5. A written advertisement by the town authorities of the work to be done, a *written bid* to do the proposed work, and a written acceptance of the bid by the proper authorities, together constitute a sufficient and binding contract, 114 Ind. 371. Unless the *contract* is in writing, there can be no recovery, 79 Ind. 137; and a written proposal by the contractor and an oral acceptance by the board is not such a contract, 66 Ind. 452. See § 3366, *note*.

6. Where an advertisement for bids stated that they would be received up to a certain hour on the following "Saturday, September 19th," but the nineteenth being Sunday, the bids were opened and the contract let on the eighteenth, this was held a valid transaction, 70 Ind. 31; 65 Ind. 29.

7. A petition is not necessary for the improvement of the streets around a *public square;* and the contractor for such improvement, on receiving an estimate, may present his claim therefor in the form of an account to the board of county commissioners, who have the power to allow it, and if payment is refused, he may either appeal from the action of the board to the circuit court, or bring an action against the county, 36 Ind. 87. It is not necessary that the account so presented should state all the steps, required by law to make a valid assessment, that were taken, 36 Ind. 87.

8. The board of town trustees can not order a street, in the same or one proceeding, to be opened or widened, graded and graveled; because the proceeding to open and widen is distinct from a proceeding to grade and gravel; *the two proceedings* can not be *blended*, and an assessment made by virtue of such an order is void, 84 Ind. 94.

Petition.

(By numbers).

To the Board of Trustees of the Town of———:

The undersigned, a majority in number of the resident owners of lots and parcels of land abutting upon so much of Hulet street as lies between Norris and Doney streets of said town, not less than one square in length, pray that the roadway of so much of said Hulet street may be graded and graveled.

(Signed)

Petition.

(By numbers in feet).

To the Board of Trustees of the Town of ———:

The undersigned, a majority of all the resident owners of lots and parcels of land on so much of Hulet street as lies between Norris and Doney streets of said town, a distance of not less than one square, to wit: one thousand feet, which majority is ascertained by measuring the front lines of the lots and parcels of land bordering on said part of said Hulet street, respectfully ask that you will order that the roadway of said part of said street be graded and graveled.

Names of resident owners. [*Signed by owner.*]	No. feet fronting on said part of Hulet Street.	No. Lot or description of land.	Addition.

Ordinance.

Whereas, A. B. and others, resident owners of lots and parcels of land on so much of Hulet street of this town as lies between Norris and Doney streets thereof, have petitioned this board to cause the roadway of said part of Hulet street to be graded and graveled; and

Whereas, said petitioners are a majority in number of all the resident owners of the lots and parcels of land abutting on said part of Hulet street

[*or*, Whereas, said petitioners are a majority in the number of feet of the front lines of the lots and parcels of land abutting and touching upon said part of Hulet street], therefore

SEC. 1. Be it ordained, by the board of trustees of the town of ———, that so much of the roadway of said Hulet street as lies between Norris and Doney streets of said town be graded according to the stakes set by the town civil engineer, on the following grade, to wit: Beginning at station, *etc.*.....

.....

and that the same be graveled to a width of ——— feet, and to a depth of ——— inches in the center, sloping to ——— inches at the sides, with the best quality of raked, river or creek gravel. All the work to be done to the entire satisfaction of the town civil engineer. And that the expense of said improvement as aforesaid (except the proportion thereof occupied by the public grounds of said city bordering thereon, and the crossings of streets and alleys) be assessed against and collected from the owners of lots and parcels of land bordering on said part of Hulet street aforesaid. The town clerk is directed to advertise for bids for making said improvement, to be opened at the next regular meeting of the board.

SEC. 2. Whereas, an emergency exists for the immediate taking effect of this ordinance, the same shall be in force from and after its passage.

Advertisement for Bids.

Notice is hereby given that bids will be received by the board of trustees of the town of ———, up to 7 p. m. on the ——— day of ———, 18—, at the office of the town clerk, for the grading and graveling of so much of Hulet street as lies between Norris and Doney streets of said town, according to the provisions of the ordinance adopted by said board on the ——— day of ———, 18—, for the improvement of said part of said Hulet street. The right is reserved to reject any and all bids.

BY ORDER OF THE BOARD OF TRUSTEES
OF THE TOWN OF ———.
By L. X.,
Town Clerk.

Journal Entry.

Ordered that the contract for grading and graveling of so much of Hulet street as lies between Norris and Doney streets be awarded to A. B., he being the best and lowest bidder. It is also ordered that the written contract and the bond for a faithful performance of said contract therewith tendered for said grading and graveling be and the same are hereby accepted and approved.

Contract and Bond.

[For a form of contract and bond, which can be modified, see the forms under § 3162.]

Sec. 3365. Cost, how apportioned. 9. In all contracts specified in the last preceding section, the cost of any such improvement shall be estimated according to the whole length of such street or alley, or the part thereof to be improved, per running foot; and the town shall be liable for so much thereof only as is occupied by public grounds of said town bordering thereon, and the crossings of the streets and alleys; and the owners of lots or parcels of land bordering on such street or alley, or the part thereof to be improved, shall be liable to the contractor for their proportion of the cost of such improvement in the ratio of the first [front] line of lots or parcels of land owned by them to the whole improved line: *Provided,* That when the owner of any lot or parcel of land shall have made any improvement in front of his lot or parcel of land in accordance with the general plan for the improvement of such street or alley, and under the direction of the board of trustees, he shall be entitled to a reasonable allowance therefor upon his proportion of the cost of such improvement; which reasonable allowance shall be determined by said board of trustees: *Provided,* That every such owner of lot or parcel of land, improved as aforesaid, shall be entitled to a credit for his road tax and road-labor tax that may accrue for the year in which the improvement is made.

1. *Correcting assessments*, § 3164, *note* 3; *payment* in advance, § 3164, *note* 4; *practice* in making assessments, § 3164, *note* 5; *constitutionality* of section, § 3164, *note* 6; contractor may *compel* final estimate by *mandamus*, 77 Ind. 307; § 3164, *note* 7; assessment must show *amount due*, § 3164, *note* 8; *joint ownership*, § 3164, *note* 8; *other property* improperly assessed, § 3164, *note* 9; property assessed must be *described*, § 3164, *note* 10; *lien* attaches when estimate is made, § 3164, *note* 11; *estoppel*, § 3164, *note* 13; *coverture* no bar, § 3164, *note* 14; *county property*, § 3164, *note* 17; *assignment* of estimate, 77 Ind. 307; § 3162, *note* 19; § 3164, *note* 18; *new assessment* may be made if old is void, § 3164, *note* 19; assessment *basis* of suit, § 3164, *note* 19; *town not liable*, § 3162, *note* 18.

2. The road tax worked out by a lot or land-owner assessed for the improvement must be accepted as a payment *pro tanto* of the amount of the assessment against him. This will leave a deficiency due the contractor, which the town must pay out of the general fund. The road receipts are sufficient evidences of the payments of the amount named therein.

Sec. 3366. Cost, how collected. 10. When any such contract shall be made, or shall have been heretofore made, and shall have been fulfilled or in progress of fulfillment, the board of trustees shall have power to cause estimates to be made, from time to time, of the amount of work done by contractor, and to require such amount to be paid to him, deducting a reasonable percentage to secure the completion of the contract, until the whole shall be finished, and to prescribe the time in which the whole shall be completed; and such estimate shall be a lien upon the ground upon which they are assessed, in favor of said contractor. In case any of the owners of lots or parcels of land on which such assessments have been made, shall fail or refuse, for the space of ten days after the date of the estimate, to pay the amount thereof due by such person to such contractor, such contractor may immediately, by a

suit in any court of competent jurisdiction, recover against such owners of lots or parcels of land the amount of such estimate; and upon execution against the property of said defendant upon such judgment, the same shall be sold for cash without regard to valuation or appraisement laws of this State: *Provided*, That in such suits on estimates, no question of fact shall be tried which may arise prior to the making of the contract for said improvement under the order of the board of trustees. When any contract for the improvement of any street or alley has been heretofore made, and wholly or partially completed, and the said improvements wholly or partially unpaid for, such contractor may collect the same under the provisions of this act, provided the requirements of this act have been followed by the board of trustees in letting such contract.

1. The sufficiency of the complaint by a contractor, to recover for improving a street in a town, may be tested by a demurrer but not as to matters occurring prior to the contract, 114 Ind. 371 (*contra*, 47 Ind. 565). See § 3165, *notes* 26, 33. The contractor must at his peril see that all the steps necessary to fix liability have been taken, § 3165, *note* 28.

2. "In every case where an incorporated town seeks to improve the streets within its limits at the expense of the parties whose lots border upon the street, except in the case of a street 'around' the public square, there must be a petition signed by a majority of the property owners upon which to base the action of the board; there must be specifications sufficient to show the kind, and quantity and location of the work to be done; there must be an advertisement for proposals to do the work; a contract to do the work according to the specifications must be entered into; the work must be done according to the contract, and the amount of the contract price therefor must be estimated to the different tracts of ground bordering on the street improved; and the board must require the owners of those tracts to pay the amount so estimated, and upon the failure or refusal of the owners of such lots or parcels of land upon which such estimates have been made, for the space of ten days after the date of such estimate, the contractor may immediately bring suit and recover, against the owners of such lots or parcels of land, the amount of such estimates. These are the essential requisites of the statute, and, in our opinion, should be substantially averred in the complaint; for otherwise there is no protection to the owners of property in incorporated towns," 47 Ind. 565; 61 Ind. 113, 323; 66 Ind. 452. If the contract contains a clause that the contractor is to receive nothing until his laborers are paid, he must aver and prove that they were all paid before the action was brought, 77 Ind. 307. The city is not liable for the amount of the assessment on account of a refusal to make a proper assessment; the remedy is by mandamus to compel it to do so, 77 Ind. 307.

3. *Exhibits* of the petition for such improvement, the record of the action of the board of trustees thereon, and other documents connected therewith, can not be made to the complaint. They are unnecessary, and if so attached will not be considered by the court, 61 Ind. 113; 84 Ind. 94. The contract between the town and the contractor must be made an exhibit; but bond for a faithful performance of the work given the town need not be, 79 Ind. 137. The assessment must be made an exhibit, 84 Ind. 94.

4. The contractor *should aver* in his *complaint*, for the purpose of showing that the requirements of the statute have been complied with, and that the defendant's lot has been charged with no more than its just proportion of the cost of improvement, the facts in regard to such cost, the whole length of the improvement, the length of defendant's front line thereon, and that the cost thereof has been estimated to the different lots or parcels of land bordering thereon, and the owners thereof, in the proportion prescribed by the statute, 66 Ind. 452; 84 Ind. 94.

5. Unless otherwise averred, it will be presumed that the *contract* is an oral one, and it will be subject to a demurrer; and even if no demurrer is filed, a written contract is not admissible in evidence at the trial. An *acceptance* of a *bid* which contains no agreement by the contractor to do the work according to the specifications, is not a valid contract, 66 Ind. 452; 79 Ind. 136. See § 3364, *note* 4.

6. *Generally*, see § 3165*a*, *note* 6, and 127 Ind. 130.

Estimates.

[For a form of estimate, which may be modified so as to constitute either a partial or final estimate, see form under § 3164.]

Journal Entry on Estimate.

Whereas, R. U., civil engineer of this town has reported to this board an estimate and apportionment among the owners of real estate bordering thereon, of the cost of the improvement of so much of Hulet street of this town as lies between Norris and Doney streets thereof, in length ——— feet, of which ——— feet is occupied by public grounds, alleys and streets of this town, according to the contract of ——— with this town for the improvement of said part of said street; therefore be it resolved that said estimate and apportionment is hereby in all things approved and adopted by this board as the true estimate and apportionment, as aforesaid, of the cost of said improvement, to wit:

Total cost of improvement . . . . . $———
Amount to be paid by this town . . . . . $———

Apportionment among the owners of lots and parcels of land which border on said part of Hulet street, viz.:

Name of Owner.	No. Lot.	Addition.	No. feet bordering on said part of Hulet street.	Amount due.

Total, ——— feet, $———.

And whereas, as it also appears that S. T. is the owner of lot 25 of Blair's addition to this town, which lot borders on that part of Hulet street so improved as aforesaid for a distance of 50 feet; and

Whereas, it appears that said S. T. has improved so much of said Hulet street as his said lot borders thereon, in accordance with the general plan for the improvement specified in the ordinance directing the said improvement of said part of Hulet street, under the direction of this board; therefore

It is ordered that said S. T. be allowed a credit upon the assessment against said lot to the amount assessed against it, to wit: ——— dollars and ——— cents.

Complaint.

In the ——— *Circuit Court*, ——— *Term*, 18—.

A——— *B*———. *vs. C*——— *D*———. *No.* ———.

A. B. complains of C. D. and says: That upon the ——— day of———, 18—, L. X. and others, who were then and there a majority in number of all the resident owners of the lots and parcels of land on that part of Hulet street lying between Norris and Doney streets, of the town of ———, county of ———, and State of Indiana, presented a petition to the board of trustees of said town, praying that the said part of said Hulet street be graded and grav-

eled at the expense of the owners of lots and parcels of land on said part of said Hulet street. That pursuant to the prayer of said petition said board of trustees on the ——— day of ———, 18—, adopted an ordinance ordering the grading and graveling of said part of said Hulet street, which ordinance took effect immediately by reason of a clause therein inserted declaring it necessary that it should at once go into effect. That by the provisions of said ordinance said part of Hulet street was required to be graded according to the stakes set by the town civil engineer, as follows, to wit: Beginning at station ———, *etc.*, and to be graveled to a width of ——— feet, and to a depth of ——— inches in the center, sloping to ——— inches at the sides, with the best quality of raked, river or creek gravel: all the work to be done to the entire satisfaction of the town civil engineer; and the expense thereof, except that portion occupied by the public grounds of said town bordering thereon, and the crossings of the streets and alleys, to be assessed against and collected from the owners of lots and parcels of land bordering on said part of said Hulet street. That said board, by the town clerk, advertised for proposals to do said work, by posting up written advertisements for bids in five of the most public places of said town, and awarded the contract therefor, at a regular meeting of said board, to this plaintiff, he being the best and lowest bidder therefor. That pursuant to the awarding of said contract, said town, by its board of trustees, at a regular meeting thereof, and this plaintiff entered into a written contract to do said work, within ——— days thereafter, according to the specifications of said ordinance, at and for the price of ——— dollars and ——— cents per square yard of surface thereof, which contract is filed herewith, marked "Exhibit A," and made a part hereof. That pursuant to the terms of said contract this plaintiff, within said ——— days, performed said work, in all things complying with the terms of his said contract and the terms of said ordinance, to the entire satisfaction of the town civil engineer; and the same was duly accepted by said board of trustees. That the entire length of said improvement is ——— feet, the length of the front lines of the public squares, streets and alleys of said town bordering thereon is ——— feet and ——— inches, and the length of the front line of the defendant's lot bordering thereon is ——— feet. That upon the ——— day of ———, 18—, the town civil engineer made an estimate of the cost of said improvement at ——— dollars and ——— cents, and reported it to said board, who adopted the same as the true cost thereof; and at the same time he estimated that said town should pay ——— dollars and ——— cents, and that said defendant should pay ——— dollars and ——— cents, by reason of the front line of his said lot bordering upon said improvement, to wit: Lot ——— of Blair's addition to said town of ———, county of ———, and State of Indiana, which estimates were in all things adopted by said board at the time they were so made and reported, as the estimate and apportionment of the cost of said work, and ordered that the same be paid to this plaintiff by the owners of the several lots and parcels of tracts so assessed, a copy of which assessment so adopted is herewith filed marked "Exhibit B," and made a part of this complaint. That this plaintiff immediately before the bringing of this action demanded of said defendant the said sum of ——— dollars and ——— cents, so assessed against said lot, but said defendant failed and neglected to pay the same for the space of ten days after the date of said estimate and its adoption by said board; and the same is now due and wholly unpaid.

Wherefore the plaintiff demands judgment for ——— dollars, the foreclosure of said lien upon said lot, and a decree that the same be sold to satisfy the amount found due from said defendant by reason of said improvement.

L. X.,
Attorney for the Plaintiff.

ARTICLE 5—OPENINGS AND VACATIONS.

SEC.

3367. Power over streets, bridges, etc.
3368. Opening streets.
3369. Duty of commissioners.
3370. Tender of damages.
3371. Assessment—Collection.
3372. Action on report—Appeal.
3373. Infants and insane.
3374. Record of plats.
3375. Donation by plat.
3376. Plat, how acknowledged.
3377. Penalty.
3378. Imperfect plat.
3379. Vacation.
3380. Proceedings concerning vacation.
3381. Title on vacation.
3382. No vacation, unless owners consent.
3383. Additions, how vacated.
3384. Change of name.
3385. Vacation of unused public square.
3386. Public square—School.
3387. Action by county board.

[1869 S., p. 33. Approved and in force, April 27, 1869.]

SEC. 3367. Power over streets, bridges, etc. 1. The board of trustees of incorporated towns in this State shall have exclusive power over the streets, alleys, highways, and bridges within the corporate limits of such town, and may prescribe the height and manner of construction of all such bridges, and lay out, survey, and open new streets and alleys, and straighten, narrow, widen, grade, and gravel, and otherwise alter and improve those already laid out, or that may be hereafter laid out, and make repairs thereto as hereinafter provided. They may cause buildings, structures, and other things in the way of any streets or other public improvement to be taken down, removed, and appropriated, upon the payment of damages as hereinafter provided. And no person residing in said town shall be compelled to work on any road or highway without the corporate limits of said town. And the board of trustees may exercise all the powers given to township trustees in regard to highways in their respective towns; and the marshal, under the direction of the board of trustees, may perform all the duties and exercise all the powers of road supervisors in reference to a road labor tax, not to exceed two days in each year, by each person liable to work on roads in townships, and shall be governed by the same rules and regulations in reference to the collections and enforcement of the same; and any person so liable to work may be discharged therefrom on the payment of one dollar and fifty cents per diem: *Provided*, That the board of trustees may, by general ordinance, prescribe the time within which and the manner in which such labor shall be performed.

1. It is the duty of a town to keep its public streets and alleys in safe condition for ordinary modes of travel, 57 Ind. 192. See § 3161, *notes* 16 to 28.

2. Working out road tax, §§ 3156*a*, 3355 and 3356. Removal of *obstructions*, § 3161, *notes* 6 to 10. Town not liable for *judicial act* in regard to streets, § 3161, *note* 1. May order a second improvement, § 3161, *note* 2. *Free gravel roads*, § 3161, *note* 3. *Market-house*, § 3161, *note* 4. Streets, alleys and sidewalks are *highways*, § 3161, *note* 5. *Railroad* in street, § 3161, *note* 7; § 3224*e*. *Dedication*, § 3161, *notes* 11 to 14, 127 Ind. 130. *Adverse user*, § 3161, *note* 15. Duty to repair,—*negligence*, § 3161, *notes* 16 to 28. *Bridges*, § 3161*a*. *Judicial notice*, § 3162, *note* 1. These sections are *constitutional*, § 3166, *note* 1. *Presumption*, as to street, § 3166, *note* 3. *Toll roads* in town, § 3106, clause 18, *note* 7. *Street railway*, § 4203*i*.

3. This section is valid, and confers upon the corporate authorities *plenary power* in relation to the grading and improvement of streets; and where the street is graded carefully, pursuant to legal authority, the owners of lots contiguous thereto have no right to compensation for consequential damages to such lots, unless such damages are expressly given by statute, 6 Ind. 237; 23 Ind. 381. The board of town trustees have *exclusive control* over the streets of the town, and the township authorities have none, 65 Ind. 404; 63 Ind. 262. Any one acting under a *township* road *supervisor*, who obstructs a street of a town situate within such supervisor's district, may be indicted and punished for unlawfully obstructing a street or highway, 65 Ind. 404. The board of *county commissioners* can not lay out a street or highway within an incorporated town; but if they do attempt to do so, the remedy of the aggrieved person is by appeal from the order establishing such highway, and not by injunction, 60 Ind. 72.

4. The acts of the property owner improving it under this section are not the acts of the town in such a sense as to charge the latter for his *negligence;* but, in order to charge the corporation, evidence of his negligence must be supplemented by evidence that the town authorities were negligent, or that the work directed to be done was intrinsically dangerous. This is especially true where the sidewalk is built under § 3357; because of the fact that the town has no authority to choose agents or servants to perform the work; that is left with the property owner, 112 Ind. 451.

5. This section does not authorize the construction of a *wharf;* but the corporate authorities of a town will not be restrained from grading a street merely because, by such grading, a wharf will accidentally be the result. They can not apply money raised for improving a street to the construction of a wharf, except so far as such wharf may be a mere incident to the legitimate improvement of the street, 6 Ind. 237. But see § 3073, *note* 1, and § 3162, *note* 2.

6. Any person who would be liable to work on the township highways if there was no town at that place, may be required to *work on the streets of the town*, and is entitled to work out his road tax; but he can not be compelled to work outside of the town, nor to work out his township road tax, nor to work in the township outside the town under the township supervisor or superintendent. In the town the marshal acts as road supervisor. No ordinance is necessary to authorize the marshal to call out those liable to work the roads, but the town may adopt an ordinance on that subject. Those who are liable to work on the highways in towns are designated by the general road law of 1883. Acts 1883, p. 62, § 6; El. Sup. § 1548; and in the order below.

7. The owner of a lot abutting upon a street has a property in the street as it exists, which can not be taken away from him without compensation; but under the power of eminent domain it may be taken for a public use by due process of law. Under this statute a street may be *narrowed*, and the property in the street appropriated in making such improvement is for a public use. In such an instance *written consent* of the owner is not necessary; section 3382 having no application to such a proceeding, 106 Ind. 29.

Order Requiring Working on the Streets.

It is hereby ordered by the board of trustees of the town of ———, that all able-bodied male persons, except insane, idiots, deaf and dumb, and blind persons of said town, over the age of twenty-one and under fifty years, and not otherwise exempt from such labor, be and are hereby required to work on the streets of said town two days during the month of April [*or*, May, *or*, June], under the supervision of the town marshal, who is hereby required to notify all such persons of the days upon which they are required to work.

Sec. 3368. Opening streets. 2. When, upon petition signed by twelve freeholders, residents of any town, the board of trustees of such town may be of the opinion that public convenience requires the opening of a new street or alley, or widening or narrowing of

a street or alley already opened, the board of trustees shall appoint three commissioners, residents of said town, who shall be disinterested freeholders, to appraise and assess the damages and benefits accruing to the owner of any land or lot through which any street or alley is proposed to be constructed or altered, or any building or structure thereon appropriated, as provided in the preceding section. Such commissioners shall, before they proceed to perform their duties as said appraisers, take and subscribe an oath or affirmation faithfully to perform their duties as such appraisers; which shall be indorsed upon or attached to their appointment, and filed with the clerk of the board. Twenty days' notice shall be given such commissioners by the board of trustees, through the town clerk, of the appraisement to be made, giving a complete description of the premises to be viewed. A like notice shall be given by personal service, or by leaving the same with some person of suitable age at their reputed place of abode, to each of the owners or agents of lots or lands upon or through which the public improvement or street or alley is proposed to be made. If the owners are unknown or non-residents, publication of the same in one or more newspapers of the town, or by posting up written notices in six public places in the town (if there be no newspaper published therein), for three weeks, shall be deemed equivalent to such personal service.

NECESSARY STEPS IN THEIR ORDER.

The following are the steps in their order necessary to be taken:

1. Petition signed by twelve freeholders, residents of the town, § 3368.

2. Appointment of three commissioners, residents of the town, by the board, § 3368.

3. Issue of appointment by the clerk, and their qualification, § 3368.

4. Twenty days' notice to the commissioners of the appraisement to be made, containing a complete description of the premises, § 3368; and a like notice to the land-owners affected; in both notices the date of the meeting being stated, § 3369.

5. Meeting of the commissioners, viewing of the premises, estimate of benefits and damages, and report to the board of town trustees within ten days thereafter, § 3369.

6. Acceptance by the trustees within twenty days, of the report; appropriation by resolution of the land necessary for the street, to be entered on their records, and direction to the treasurer to tender each land-owner the amount of damages assessed to him, less the benefits assessed to him, § 3370.

7. Assessment list made out from the report, demand of payment, and suit to collect the amount due, § 3371.

8. Appeal by person assessed or damaged within thirty days from the date of filing the report, § 3372.

NOTES.

1. The power to *straighten* a street does not seem to be given in direct terms under this section; but a street may be straightened under the power to widen or narrow it. Failure to indorse the *oaths* on the appointment is no cause for an injunction, § 3166, *note* 2; *interested* commissioners, § 3167, *notes*

1 *and* 2; *location*, § 3167, *note* 4; statute must be *substantially complied with*, § 3167, *notes* 3 *and* 12; power of eminent domain, § 3167, *notes* 6 *to* 11.

2. A street can not be ordered widened and improved at the same time. The proceedings are entirely separate and distinct, 84 Ind. 94.

3. If the board finds that notice of the proceedings has been given, the finding is conclusive, 106 Ind. 29; a property owner served can not object to the proceedings on the ground that another interested person was not served, 106 Ind. 29.

4. Service upon the county sheriff "in charge of the public property of said county," seems to have been deemed sufficient so far as county property—a public square—was concerned, 106 Ind. 29.

5. A suit to compel *specific performance* of a written agreement to open a public street in an addition to a town is not the proper proceeding to remove an obstruction from said street, 73 Ind. 595.

Petition for Narrowing Street.

To the Board of Trustees of the Town of ———:

The undersigned, resident freeholders of said town, of the State of Indiana, pray that so much of Blair street of said town as lies between Wabash avenue and Main street be narrowed from its present width of ninety feet to sixty feet, by vacating thirty feet on the east side thereof.

Dated ———, 18—.

Petition for Widening Street.

To the Board of Trustees of the Town of ———:

The undersigned, resident freeholders of said town, of the State of Indiana, pray that so much of Blair street of said town as lies between Wabash avenue and Main street be widened from its present width of fifty feet to sixty feet, by appropriating from the property abutting upon the west side of said Blair street a tract of land ten feet in width, extending from said Wabash avenue to said Main street.

Dated ———, 18—.

Petition for Straightening.

To the Board of Trustees of the Town of ———:

The undersigned, resident freeholders of said town, of the State of Indiana, pray that Blair street, of said town, may be straightened, so as to make it a uniformly straight street.

Dated ———, 18—.

Petition for Opening Street.

To the Board of Trustees of the Town of ———:

The undersigned, resident freeholders of said town, of the State of Indiana, pray that a street be opened in said town, from John street to Clay street of said town, beginning at a point in the north margin of John street four hundred feet east of the northeast corner of said John street and Henry street as the center of said proposed street, and running thence due north to said Clay street, to be sixty feet in width.

Dated ———, 18—.

Appointment of Commissioners.

Whereas, twelve resident freeholders of this town of ——— have presented a petition, duly signed by them, to this board of trustees, praying that a highway be opened from John to Clay streets, in said town, beginning at a point in the north margin of John street, four hundred feet east of the north-

east corner of said John street and Henry street, as the center of said proposed street, running thence due north to said Clay street, to be sixty feet in width; and

Whereas, said board is of the opinion that public convenience requires the opening of such proposed street; therefore

Be it resolved, that A. B., C. D., and E. F., residents of said town, who are disinterested freeholders thereof in said matter, be and the same are hereby appointed commissioners to appraise and assess the damages and benefits accruing to the owner of any land or lot through which it is proposed to construct such proposed street, and to appraise and assess the damages to any building or structure thereon that it will be necessary to appropriate. Said commissioners are hereby directed to meet at 10 a. m. on the ——— day of ———, 18—, at the town hall of said town for the purpose of making said appraisement.

Notice of Appointment.

To A. B., C. D. and E. F.:

You are hereby notified that at a regular meeting of the board of trustees of the town of ———, of the State of Indiana, that you were and are hereby duly appointed three commissioners to appraise and assess the damages accruing to the owners of land and lots, and any building or structure thereon appropriated, through which it is proposed to construct a street in said town, the center of said proposed street beginning at a point four hundred feet east of the northeast corner of John and Henry streets, and running thence north to Clay street, as will be more fully described in a notice to be hereafter given you.

Dated ———, 18—.

THE BOARD OF TRUSTEES OF THE TOWN OF ———.

[Corporate Seal.] By L. X.,
Town Clerk.

Oath.

State of Indiana, County of ———, ss:

We, A. B., C. D., and E. F., do solemnly swear that we will faithfully perform our duties as commissioners in the matter of opening a street in the town of ———, more particularly described in the above notice of appointment. So help us God.

A. B.,
C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Notarial Seal.] L. T.,
Notary Public.

[This notice and oath should be filed with the clerk and there remain.]

Notice to Commissioners.

To A. B., C. D., and E. F.:

You are hereby notified that upon the ——— day of ———, 18—, you were appointed a commissioner by the board of trustees of the town of ———, of the State of Indiana, to assess the benefits and damages accruing to the owner of any land or lot, and any building or structure thereon, through which it is proposed to construct a street within said town from John to Clay streets, more particularly described as follows, to wit: Beginning at a point in the north margin of John street, four hundred feet east of the northeast corner of said John street and Henry street, as the center of said proposed street, and running thence due north to said Clay street, said proposed street to be sixty feet in width, and passing through the following lots and parcels of land of said town owned by the persons named, to wit:

Name of Owner.	No. of Lot.	Addition.

You are hereby directed to meet at 10 a. m. on the ——— day of ———, 18—, at the town hall of said town for the purpose of making said appraisement.

Dated ———, 18—.

THE BOARD OF TRUSTEES OF THE TOWN OF ———.

[Corporate Seal.] By L. X.,
Town Clerk.

[Duplicates of this notice should be made, and one copy served upon the three trustees, leaving it with the last one served. The second one should be returned to the town clerk, with an affidavit, acknowledgment or certificate of service.]

Acknowledgment of Services.

We hereby acknowledge service of the within notice and the receipt of a copy thereof.

Dated ———, 18—.

A. B.,
C. D.,
E. F.

[The notice left with the commissioners should be returned by them with their report.]

Notice to Land-owner.

To [*naming each land-owner affected by the proposed opening*]:

You are hereby notified that upon the ——— day of ———, 18—, at 10 a. m., A. B., C. D., and E. F., the commissioners appointed for that purpose by the board of trustees of the town of ———, of the State of Indiana, will meet at the town hall of said town for the purpose of assessing the damages and benefits to any land, lots or buildings and structures thereon appropriated, occasioned by the opening of a street over the following route in said town, to wit: Beginning at a point for the center of said proposed street in the north margin of John street, four hundred feet east of the northeast corner of John and Henry streets of said town, and running thence north to Clay street, said proposed street to be sixty feet in width, through the following described land and lots in said town, respectively owned by the persons named, to wit:

Name of Owner.	No. of Lot.	Addition.

Dated ———, 18—.

THE BOARD OF TRUSTEES OF THE TOWN OF ———.

[Town Seal.] By L. X.,
Town Clerk.

[The above notice may be served by reading to the person interested, or by copy, as designated in the statute. The marshal serves it. If an owner is unknown or a non-resident of the county (that is what is meant by the word non-resident) the above notice may be published and the usual affidavit of publication secured.]

Return of Service.

Served by reading to R. U., etc., and by leaving a certified copy at the last and usual place of residence of U. T. with U. R., a person of suitable age; X. L. not found.

Dated ———, 18—.

X. Y.,
Town Marshal.

Sec. 3369. Duty of commissioners. 3. Such commissioners, or a majority of them, shall, at the place and time indicated in such notice, proceed to an examination of the real estate proposed to be appropriated as aforesaid, and shall then and there estimate, first, the value of the land or other property to be appropriated for such improvement; second, what real estate, if any, would be benefited by the improvement, specifying the same in parcels, with the name of the owner if known, and the proportion of benefits each owner receives, and the proportion of damages each would sustain. They shall view the premises, and receive any evidence touching the question before them; and may, for that purpose, administer oaths to witnesses examined in relation thereto. They shall report on each of the specifications above indicated, and, within ten days thereafter, file the same with the clerk of the board of trustees.

1. *Measure of damages*, § 3170, *notes* 1 to 4. *Description of real estate*, § 3171, *notes*.

2. If the report is silent as to the value of the right in question, and resulting damages, it will be presumed that the commissioners considered them as nothing, 106 Ind. 29.

Subpoena.

[See form under § 3169.]

Claim for Damages.

[See form under § 3169.]

Report.

To the Board of Trustees of the Town of ———:

The undersigned, commissioners appointed to appraise and assess the damages and benefits accruing to the owners of any land or lots through which it is proposed to open a street from John to Clay streets, of said town, beginning at a point for the center of said proposed street in the north margin of John street four hundred feet east of the northeast corner of John and Henry streets, and running thence north to said Clay street, a distance of ——— feet, said proposed street to be sixty feet wide, report as follows, to wit: That they met at 10 a. m. on the ——— day of ———, 18—, in the town hall of said town,

pursuant to the notice previously given and return thereon made by the town marshal, and proceeded to examine all the real estate that will be affected by the opening of said proposed street. That it will be necessary to appropriate the following described real estate, situate in said town, owned by the persons named, and of the value given, to wit:

Name of Owner.	Description of Land to be Appropriated.	Value.

Total value of real estate to be appropriated . . . . . $———

They also report that the following real estate, situate in said town, owned by the persons named, will be benefited by the opening of said proposed street, in the amounts respectively set opposite each lot or tract of land, viz.:

Name of Owner.	Lot.	Addition.	Amount of Benefits.

Total amount of benefits . . . . . $———

They further report that the following real estate, situate in said town, owned by the persons named, will be damaged by the opening of said proposed street, in the amount set opposite each lot or tract of land, viz.:

Name of Owner.	Lot.	Addition.	Amount of Damages.

Total amount of damages . . . . . $———

All of which is respectfully submitted.
Dated ———, 18—.

A. B.,
C. D.,
E. F.,
Commissioners.

Sec. 3370. Tender of damages. 4. When such report is filed, as in the preceding section required, the board of trustees, if it accept the terms of the same, shall direct the treasurer of the town to tender the owner or owners of such real estate, or their heirs or representatives, the damages awarded by such commissioners, deducting the amount of benefits assessed to such owner or owners; or if not found within the town, or the award is not accepted, then the sum shall be kept by the treasurer as a special deposit, subject to the order of such owner, or his heirs or representatives.

1. Tender is essential, § 3176, *note* 1. Estoppel, § 3176, *note* 2. Acceptance, § 3176, *note* 3.

2. The money tendered and not accepted, and the amount due non-residents of the town, must be separated from the general and special funds of the town, and marked for the person entitled to it. In case of a tender and refusal, at least, the money is held by the town at the risk of the person entitled to it; and if it is stolen, due care having been used to keep it, the loss falls upon the person who is entitled to it; but if embezzled by the treasurer, the town will be liable to the person entitled to it, for such treasurer is the agent of the town.

Order of Tender.

Ordered that the treasurer of this town tender to M. O. the sum of $———, N. P. the sum of $———, in payment of the damages due them by reason of the proposed opening of a street from John street to Clay street; and if they or either of them refuse to accept the amounts respectively due them, said treasurer is ordered to keep the same in a special deposit, subject to the order of the person entitled to it, or his heirs or representatives.

Sec. 3371. Assessment—Collection. 5. If the board of trustees, within twenty days after the filing of said report, by a vote of a majority of the members, determine to make the appropriation of real estate for such improvement, it shall cause an assessment-list to be made, by transcribing so much of the report, as aforesaid, as describes the parcels of real estate to be benefited by the opening or improvement, with the name of the owner, if known, and the amount of benefits which each would receive, thereby directing such amount to be assessed upon such parcels of real estate respectively; which assessment shall be a lien on such real estate. The board of trustees may, immediately after making such assessment, by suit in any court of competent jurisdiction, in the name of such corporation, recover against the owners of such parcels of real estate the amount of such assessment; and upon execution against the property of said defendant upon such judgment, the same shall be sold for cash without regard to valuation or appraisement laws of this State.

Personal judgments may be rendered in these actions to enforce payment of the assessments.

Resolution of Acceptance and Appropriation.

Be it ordained by the board of trustees of the town of ———, State of Indiana, that the report of the three commissioners appointed in the matter of opening a street in said town, from John street to Clay street, four hundred feet east of Henry street, filed with the clerk of said town on the ——— day of ———, 18—, be and the same is hereby accepted and adopted, as well as the terms thereof, and the following land in said town, therein described as necessary to be appropriated, be and the same is hereby appropriated for the purpose of said street, to wit:

Name of Owner.	Description of Land.

And said land be, and is hereby dedicated to the use of the public as a public street and highway of said town, to be known as Vernon street. It is also hereby further ordained and ordered that the following lots and parcels of land, described in said report as benefited, be and the same is hereby assessed with the amount respectively in which said commissioners have reported that they would be benefited by the opening of said street, to wit:

Name of Owner.	Description of Land.	Amount of benefits.

And the amounts hereby assessed respectively to each and every lot and parcel of land is hereby declared to be a lien on said lot or parcel of land.

Complaint.

In the ——— *Circuit Court.*

The Town of ——— *vs. R*——— *S*———, *No.*——.

The town of ——— complains of R. S. and says that upon the ——— day of ———, 18—, twelve resident freeholders of said town presented a written petition to the board of trustees of said town to open a street from John street to Clay street of said town, beginning at a point, as the center of said proposed street, in the north margin of said John street four hundred feet east of the northeast corner of said John street and Henry street, and running thence north to Clay street. That said board, at a regular meeting thereof, held on the ——— day of ———, 18—, being of the opinion that public convenience required the opening of said new street, so declared and entered such declaration of record and appointed three commissioners, residents of said town, who were disinterested freeholders thereof, to appraise and assess the damages and benefits accruing to the owner of any land or lot through which it was proposed to construct said street, and to appraise and assess the value of any building or structure on any of such land or lots appropriated. That said commissioners were duly notified of their appointment, and each took and subscribed an oath to faithfully perform their duties as such appraisers, which oath was indorsed on the notice of their appointment, and filed with the clerk of said town. That said board, through the town clerk, gave said commissioners twenty days' notice of the time and place of their meeting, and of the appraisement to be made, a complete description of the premises to be viewed being given in said notice; and a like notice was duly given to each of the owners and agents of lots or lands upon or through which it was proposed to open and make said street. That said commissioners, at the time and place indicated in said notice, proceeded to an examination of the real estate proposed to be appropriated, as well as both that which would be benefited by the proposed improvement and that which would be damaged. That they estimated the value of the land to be appropriated for such improvement, specifying the same in parcels with the name of the owner as well as both the proportion of benefits each owner of land affected would receive and the proportion of damages each would sustain. That they on the ——— day of ———, 18—, filed a written report, duly signed by them, of their proceedings in said matter showing in detail their doings in said premises, as aforesaid stated, which report and the terms thereof was accepted by said board at a regular meeting thereof, within twenty days after the same was filed; and the land therein described as necessary to be appropriated for said street was appropriated and dedicated by said board to the uses and purposes of a street, all of which proceedings were duly entered of record in the records of said town. That said board, at the same time caused an assessment list to be made, a copy of which is filed herewith, marked "Exhibit A," and made a part hereof, by transcribing so much of said report as described the parcels and lots of real estate to be benefited by the opening of said street, with the name of the owner

and the amount of benefits to which each owner was entitled, which assessment was duly entered of record in the records of said town. That among the lots and parcels of land thus assessed with benefits in said report of said commissioners, and as appears in said exhibit, was lot 16 of Blair's addition to said town, which was assessed with $76.23 of benefits, and which lot then and now was and is owned by said defendant. That before the bringing of this action, and after the necessary part of said report had been transcribed as aforesaid, the plantiff, through and by its agents and officers demanded of said defendant the payment of said sum of $76.23, that being the amount due thereon, no damages having been assessed to said lot, which amount, nor any part thereof, said defendant failed and neglected to pay; and there is now due and unpaid thereon the sum of $76.23, with interest from the date of said demand; for which the plaintiff demands judgment against said defendant, the foreclosure of the lien on said lot by reason of the proceedings aforesaid, and an order that said lot be sold to satisfy the amount of said judgment.

H——— I———,
Attorney for Plaintiff.

Sec. 3372. Action on report—Appeal. 6. The board of trustees shall, within twenty days from the filing of said report, either accept or reject the terms of the same. And any owner of land or representative thereof, aggrieved by such report, may appeal therefrom at any time, within thirty days after the filing thereof, to any court having jurisdiction of the same, upon filing the usual bond with the clerk of said town for the payment of costs. But no such appeal shall prevent any such town from proceeding with said appropriation and improvement as if no appeal had been taken. No other question shall be determined than the regularity of the proceeding in the suit and the amount of damages sustained.

1. *Injunction*, § 3173, *note*. *Status* of report before acceptance, § 3174, *note* 1. *Effect of acceptance* and appropriation, § 3174, *note* 3. *Sufficiency* of resolution of appropriation, § 3174, *note* 4.

2. The board must act upon the report within twenty days and make an entry of their action. Such action can not be shown by *parol*, even though no entry was ever made of the board's action, 124 Ind. 86.

3. On appeal the transcript stands as a complaint, and may be demurred to by the person appealing, who stands upon the record as a defendant. If there is a substantial error in the record the demurrer should be sustained, 106 Ind. 29.

4. *Answer* of appellant or defendant, § 3180, *note* 2. Validity as to *third person*, § 3180, *note* 3. *Proof of damages*, § 3180, *note* 4. *Question to be tried*, § 3180, *note* 5. *Appeal* is to circuit court, 73 Ind. 1.

Appeal Bond.

[See form under § 3180.]

Notice of Appeal.

[This may be an ordinary summons.]

Transcript on Appeal.

Be it remembered that upon the ——— day of ———, 18—, the following petition was presented to the board of trustees of the town of ———, of the State of Indiana, viz.:

[*Set out petition.*]

On the ——— day of ———, 18—, the following proceedings were had and held by said board, at a regular meeting thereof, and duly entered of record, viz.:

[*Set out resolution appointing three commissioners.*]

And thereupon the following notices were given to said A. B., C. D., and E. F., viz.:

[*Set out notice of appointment.*]

And thereupon the following notice of the proposed improvement was given to said commissioners, viz.:

[*Set out notice of improvement proposed.*]

And thereupon the following notice was issued to the marshal of said town and returned with the following return of service indorsed thereon, viz.:

[*Set out notice to land-owners, and the marshal's return of service.*]

And thereupon the following notice and affidavit of publication was given, and a copy thereof filed in the clerk's office of said town, viz.:

[*Set out notice to non-residents by publication, with affidavit of publication.*]

Be it further remembered that upon the ——— day of ———, 18—, said commissioners filed the following report of their doings and proceedings in said premises, viz.:

[*Set out report in full.*]

And thereupon, on the ——— day of ———, 18—, at a regular meeting of said board, the following proceedings were had and held, and entered of record, with reference to said report, viz.:

[*Set out the resolution of acceptance.*]

And thereupon, on the ——— day of ———, 18—, R. U. filed with me, which is herewith transmitted, an appeal bond in the matter of opening said street, praying for an appeal to the ——— circuit court.

I, X. Y., clerk of the town of ———, of the State of Indiana, hereby certify that the above and foregoing is a full, true, and complete transcript of all the proceedings had and held by the board of trustees of said town and by the commissioners appointed in the above matter, as appears from the records and files of said town; and is a full, true, and complete copy of all papers filed in my office in the matter of opening the street therein referred to.

In testimony whereof, I have hereunto set my hand and the corporate seal of said town this ——— day of ———, 18—.

[Corporate Seal.]

X. Y.,
Clerk of the Town of ———.

Sec. 3373. Infants and insane. 7. When the owner of any such land or building, appropriated as aforesaid, shall be an infant or of unsound mind, no proceeding shall be had affecting the rights of such persons until a guardian therefor shall be appointed by the court having probate jurisdiction, and such guardian shall have given security to the satisfaction of such court for the faithful performance of the trust; but any proceeding affecting such rights shall only be void to that extent.

The commissioners can report to the circuit court, if they choose to do so, that no guardian has been appointed for an interested infant or insane person, using the form under § 3173. In such an instance the report must necessarily be delayed until such guardian has been appointed, and then notice can be served upon him the same as if he had been appointed and made a party to the proceedings in the first instance. The commissioners must necessarily have the power to verbally direct the service on the guardian of the notice, and set a day for a hearing. Such guardian must be given the same length of time as if he were first made a party. This will necessarily delay the report; but the time within which it is prescribed that a report must be filed is only directory and not mandatory; and the delay will not affect its validity. All the steps taken with reference to an infant or insane person should be set out in the report, accompanied by the notice served on the guardian.

[1 R. S. 1852, p, 493. Approved May 20, 1852, and in force May 6, 1853.]

SEC. 3374. Record of plats. 1. Any person who may hereafter lay off any town, or addition thereto, in this State, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a correct copy of the plat of said town, with the public grounds, streets, lanes, and alleys, with their respective widths properly marked, the lots regularly numbered, and the size of the lots marked by reference to the plat.

1. See § 6392. In order to show the *dedication* of private property to the public use by user, there must have been a user by the public adverse and exclusive to that of the owner, 30 Ind. 389; 127 Ind. 130. See § 3161, *note* 13.

2. The making and *dedication* of streets, lanes and alleys *on* a town *plat* gives to the public only an *easement* therein; the fee-simple remains in the proprietor, 48 Ind. 178; and this is true of that part of the town of Indianapolis laid out by the State, 74 Ind. 29. The *wife's inchoate* interest in the streets and alleys is barred by the plat, even though she does not sign it, 85 Ind. 104.

3. The above section does *not apply* to *out-lots* in a congressional section of land, 47 Ind. 274.

4. A plat *not signed* and *acknowledged* as is required by law is not entitled to record; and if it be recorded the record is a nullity, 47 Ind. 274. An *explanatory note* upon the plat, which is inconsistent with all other things appearing by the plat, including courses and distances marked thereon, will not be held to control the other facts thus appearing when a question of a location of a lot is in dispute, 100 Ind. 463.

5. The plat of an addition to a town must now be approved by the board of town trustees before it can be recorded, § 3229c. But this does not apply to the original plat of a town; but if territory that had never been incorporated as a town was laid out in lots, the plat of it would not have to be submitted to the board.

SEC. 3375. Donation by plat. 2. Every donation or grant to the public, or to any individual, religious society, corporation, or body politic, noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered a general warranty to the said donee or grantee for the purposes intended by the donor or grantor.

1. The intention of the proprietor of the plat in regard to the meaning of the marks on reservations noted on the plat is in general a question of fact and not of law, 82 Ind. 321; 123 Ind. 196. Merely marking a square as "Tipton Square" will not be sufficient evidence of a dedication to the public, 8 Ind. 378.

2. Where the owner of land made and recorded a plat of it, and filed with the plat a written explanation stating that it was a plat of certain land "in blocks or squares, by the drawing of lines across said ground, where the center line of the street will come when the same is platted to correspond with the commissioner's plat and the streets in the plat, it being the intention of said commissioners to plat said ground, or in the event of their being sold by him, to provide for their being platted to correspond with the contiguous ground already platted," it was held that there was no dedication of the land between the blocks for streets, 125 Ind. 1.

3. Dedication can be made, although there is no grantee *in esse* at the time, capable of taking the fee, 1 O. S. 478; but a dedication must be to a public use; it can not be made to a railroad company, 19 O. S. 514. No particular form is necessary, so long as the intention of the donor is demonstrated to dedicate, and the public to accept, 7 O. (pt. 1) 218. Wife is not required to sign, to be barred of dower, 8 N. Y. 110; 3 O. 24. The recognition of a street by the owner of a

lot will operate as a dedication of all the property he may own within the lines of the street to the next intersecting street on each side, 1 Hill. 189. And one who sells lots upon a "contemplated street" is bound to keep it open to its full dimensions through his own lands until it reaches some other street or public way, 10 Bull. 194.

4. Dedication of a street by plat without acknowledgment can, as against the corporation, be revoked at any time before acceptance, 26 O. S. 94; and a deed of general warranty will constitute a revocation, *Ibid;* but if lots have been sold on such plat, as against the vendee, the vendor, or one claiming under him, can not refuse the unobstructed use of such street, 1 Disney, 401.

5. An owner, who in a deed of a lot refers to and calls for a street laid out by a platting commission, dedicates not only the ground in front of the lot sold, but all the land owned by him within the lines of the street at other points, 17 Bull. 166.

[1881, p. 56. Approved and in force March 3, 1881.]

SEC. 3376. Plat, how acknowledged. 3. The person desiring to lay off such lots, before offering such plat for record, shall acknowledge the same before some officer authorized by law to take and certify the acknowledgment of deeds in the proper county; a certificate of which acknowledgment shall be, by the officer taking the same, annexed to such plat or other paper, and recorded therewith.

Unless properly signed and acknowledged a plat is not entitled to record; and if recorded the record is a nullity, 47 Ind. 274; 25 Ind. 531. The wife need not sign nor acknowledge its execution, 85 Ind. 104.

Dedication and Acknowledgment.

State of Indiana, County of ———, *ss.*

I, A. B., do hereby certify that the annexed map is a true plat of an addition to the town of ———, of the State of Indiana, to be known as Blair's addition; that the lots are numbered as designated by numbers on said map; that the streets are all of the width of sixty feet, and the alleys of the width of ten feet; and that I hereby dedicate so much of the streets and alleys as is therein designated to the use of the public for the use and purposes of public highways.

In testimony whereof, I hereunto set my hand and seal this ——— day of ———, 18—.

A. B.

Personally appeared before me, a notary public in and for the county and State aforesaid, the above named A. B., and acknowledged the execution of the above and foregoing plat.

In testimony whereof, I hereunto set my hand and notarial seal this ——— day of ———, 18—.

[Notary Seal.]

X. L.,
Notary Public.

[1 R. S. 1852, p. 493. Approved May 20, 1852, and in force May 6, 1853.]

SEC. 3377. Penalty. 4. Every person who may lay off any town, or any addition to any town, in this State, and fail to comply with the requisitions of this act, shall forfeit and pay, for the use of said town, for every month, a sum not exceeding one hundred dollars nor less than five dollars, to be recovered in the name of the treasurer of the county.

Sec. 3378. Imperfect plat. 5. Where any town plat, heretofore or hereafter to be recorded, does not clearly describe the size of the lots, streets, alleys, and courses of the lines of said town, and where donations have been given or intended to be given, either to the public or to individuals, or to any religious society, and it has been neglected to insert the same on said plat, any of the proprietors of such town are hereby required to make out such other description as will more clearly explain the true intent; which shall be acknowledged, certified, and recorded as required in this act.

[1857, p. 126. Approved February 26, 1857, and in force August 24, 1857.]

Sec. 3379. Vacation. 6. Whenever any person or corporation interested in any incorporated town, or in any real estate, in this State, laid out in streets and lots as a town, may desire to vacate any lot, street, alley, common, public square, or part thereof, in such town or plat of town, such person or corporation may petition the board of county commissioners of the proper county, giving a distinct description of the property to be vacated and the name of the persons to be affected thereby; which petition shall be filed with the county auditor thirty days previous to the sitting of such board; and notice of the pendency of said petition shall be given, for the same space of time, in a public newspaper printed in said county, if any there be, and by written notices thereof set up in three public places near the lots, streets, alleys, common, or square proposed to be vacated.

NECESSARY STEPS TO BE TAKEN.

The following are the steps necessary to be taken and the order in which they follow each other:

1. Petition to the board of county commissioners praying the vacation of a certain named street or portion thereof, containing names of the persons affected thereby, signed by the person or corporation desiring the vacation, § 3379.

2. Notice by the auditor for thirty days of the pendency of the proceedings, § 3379.

3. Order of vacation, if there is no opposition; if there is opposition, continuance to the next term, and then order of vacation if the objector consent or two-thirds of the real estate holders of the town petition for it, § 3380.

4. Obtaining consent of the land-owners abutting thereon before a justice of the peace, § 3382.

NOTE.

In the opinion of the writer this section and the four following sections are repealed by § 3367, giving the board of town trustees "exclusive power over the streets, alleys, highways and bridges within the corporate limits" of the town, so far as it appertains to streets and alleys. Forms are, however, added for the use of those who desire to pursue their directions.

Petition.

To the Board of Commissioners of the County of ———:

The undersigned, severally the owners of real estate in the town of ———, of the State of Indiana, pray that so much of North street of said town

as lies between Vernon street and the corporate limits of said town on the west side thereof be vacated. They state that the following named persons and real estate situate in said town will be affected by said proposed vacation, viz.:

Name of Owner.	Lot.	Addition.

As a reason for the vacation of that part of said North street, they say that the same is of no public benefit, and is totally unused by the public.

A. B., etc.

Notice.

Notice is hereby given that A. B. and others, the owners of real estate situate in the town of ———, county of ———, and State of Indiana, filed a petition on the ———, day of ———, 18—, in the office of the auditor of said county, praying that so much of North street of said town as lies between Vernon street and the corporate limits of the west side of said town be vacated. Said petition will come up for a hearing before said board of commissioners at their next meeting, held in the auditor's office of said county on the first Monday of ———, 18—, being the ——— day of ———, 18—.

Dated at ———, Ind., this ——— day of ———, 18—.

X. L.,
Auditor of the County of ———.

[1 R. S. 1852, p. 493. Approved May 20, 1852, and in force May 6, 1853.]

Sec. 3380. Proceedings concerning vacation. 7. If no opposition be made to such petition, the board of county commissioners may vacate the same, with such restrictions as they may deem for the public good; but if opposition be made, such application shall be continued until the next term of the board, when, if the objector consent to such vacation, or if two-thirds of all the real estate holders of the town petition therefor, the board may grant the prayer of the petition.

Petition to Vacate.

To the Board of Commissioners of the County of ———:

The undersigned, two-thirds of all the real estate holders of the town of ———, of the said county and the State of Indiana, pray that you will vacate so much of North street of said town as lies between Vernon street and the corporate limits of said town on the west side thereof.

[Signed.]

Remonstrance.

To the Board of Commissioners of the County of ———:

The undersigned, owners of real estate in the town of ———, of said county and the State of Indiana, respectfully pray that you do not vacate so much of North street of said town as lies between Vernon street and the corporate limits of said town on the west side thereof, as you have been requested to do.

[Signed.]

Order of Vacation.

Whereas, A. B. and others, owners of real estate situate in the town of ———, county of ———, and State of Indiana, on the ——— day of ———, 18—, filed a petition in the auditor's office of this county, and presented the same to this board, praying that so much of North street of said town as lies between Vernon street and the corporate limits of said town on the west side thereof be vacated; and

Whereas, thirty days' notice of the pendency of said petition before this board was given by the auditor of this county by publication in the *Argus-News*, a newspaper printed in said county, and by written notices thereof set up in three public places near that part of said North street proposed to be vacated; and

Whereas, notwithstanding objections made to said proposed vacation, two-thirds of all the real estate holders of said town have petitioned this board to vacate said part of said North street;

[*or*, Whereas, L. X., at the last session of this board, objected to the vacation of said part of said North street, and for that reason the same was continued until the present term; and now said L. X. gives his consent to said vacation]; therefore

So much of said North street as lies between said Vernon street and the west corporate limits of said town, as aforesaid described, be and the same is hereby ordered to be vacated, and the right of the public to use the same for a street is hereby revoked and annulled; and said vacation shall take effect whenever the persons owning property immediately adjoining that part of said North street to be vacated shall file their written consent to said vacation, duly acknowledged, with this board.

Sec. 3381. Title on vacation. 8. The part so vacated, if it be a lot, shall vest in him who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the ground bordering on such street or alley, and all title thereto shall vest in the persons owning the property on each side thereof, in equal proportions, according to the length or breadth of such ground, as the same may border on such street or alley. And whenever a public square shall be vacated, the property thereof shall vest in the board of county commissioners, for the use of the county.

Sec. 3382. No vacation, unless owners consent. 9. But no such vacation of a street or alley shall take place, unless the consent of the persons owning the property immediately adjoining thereto be obtained therefor in writing; which consent shall be acknowledged before some justice of the peace, and filed with said board.

Consent.

To the Board of Commissioners of the County of ———:

The undersigned, owners of all the property immediately adjoining upon that part of North street, of the town of ———, of the county of ———, and State of Indiana, extending from Vernon street to the west corporate limits thereof, hereby consent that the same may be vacated and abandoned by the public. [Signed.]

A. B., etc.

State of Indiana, County of ———, ss.

Personally appeared before me, a justice of the peace in and for said county and State, the above named A. B., etc., and acknowledged the execution of the above and foregoing instrument.

In testimony whereof, I have hereunto set my hand and seal this ——— day of ———, 18—.

R. U.,
Justice of the Peace.

Order-Book Entry of Filing Consent.

Comes now A. B., etc., and file their written consent to the vacation of so much of North street, of the town of ———, of the county of ———, and State of Indiana, as lies between Vernon street of said town and the west corporate limits thereof, which consent is duly acknowledged before a justice of the peace of this county; and said persons so signing said written consent being all the persons whose lands immediately adjoin said part of said North street, the same is hereby declared vacated in accordance with the order of this board this day entered of record [*or*, entered of record on the ——— day of ———, 18—], and said order is declared to be in full force and effect.

Sec. 3383. Additions, how vacated. 10. If any person shall lay off an addition to any town which does not improve, and shall be the legal owner of all the lots contained in such addition, such person, or any other person who shall become the legal owner thereof, may have such addition, or any part thereof, vacated, by applying to the board of commissioners of the proper county, after notice as hereinbefore provided, and proof of ownership of such lots.

Petition.

To the Board of Commissioners of the County of ———:

The undersigned says that upon the ——— day of ———, 18—, he, being then the owner of the land, platted and laid off an addition, known and called Blair's addition, to the town of ———, of the county of ———, and State of Indiana, which plat was duly acknowledged and recorded in the recorder's office of said county in deed record No. ———, on pages ———. He says that he is still the legal owner of all of said addition, no other person having any interest therein; and the same does not improve said town, because a strip of unplatted land forty rods wide entervenes between it and the platted and occupied part of said town. He therefore prays that said addition be vacated.

Dated ———, 18—. A. B.

Notice.

Notice is hereby given that on the ——— day of ———, 18—, A. B., claiming to be the legal owner of the addition therein described, filed a petition in the auditor's office of the county of———, and State of Indiana, praying that Blair's addition to the town of———, of said county, laid out and duly recorded in the recorder's office of said county on the ——— day of ———, 18—, in deed record No. ———, on pages ———, be vacated. Notice is therefore given that the matter will come up for hearing at the next term, beginning on the first Monday of ———, on the ——— day of ———, 18—, of the board of commissioners of said county, for a hearing, which board will sit in the auditor's office of said county.

X. L.,
Auditor of the County of ———.

Order of Vacation.

Whereas, A. B., on the ——— day of ———, 18—, filed the following written petition in the auditor's office of this county, viz.: [*Set out the petition*]; and

Whereas, the auditor of this county caused the following notice to be published in the *Argus-News*, a paper printed in this county, thirty days previous to the sitting of this board at the present term, and caused the same notice to be set up in three public places near said addition, to wit: [*Set out the notice, with proof of publication*]; therefore,

It is hereby ordered that said Blair's addition to said town of ——— be and the same is hereby vacated.

Sec. 3384. Change of name. 11. Such board may change the name of any town upon a petition therefor of a majority of the qualified electors of such town; and in case any such change is made, notice thereof shall be given by publication, three weeks successively in a newspaper of the county, if any, and, if not, by written or printed notices posted up in three of the most public places of such town; and a certified copy of the order of such change shall be recorded in the recorder's office of the county.

Petition.

To the Board of Commissioners of the County of ———:

The undersigned, a majority of the qualified electors of the town of ———, of the county of ———, and State of Indiana, hereby request that the name of said town be changed to ———.

Order Changing Name.

Whereas, A. B. and others have petitioned this board to change the name of the town of ———, of the county of ———, and State of Indiana, to ———; and

Whereas, said petitioners constitute a majority of all the qualified electors of said town; therefore

It is ordered that the name of said town of ——— shall from and after this date be ———, and said town shall be so known and designated.

Notice.

Notice is hereby given that on the ——— day of ———, 18—, upon the petition of a majority of all of the qualified electors of the town of ———, of the county of ———, and State of Indiana, the board of commissioners of said county changed the name of said town of ——— to ———, in accordance with the prayer of said petition.

Dated ———, 18—.

X. L.,
Auditor of the County of ———.

[1879, p. 172. Approved March 31, 1879, and in force May 31, 1879.]

Sec. 3385. Vacation of unused public square. 1. Where, in any township having a population of less than two thousand according to the census of the United States of America, taken in the year of our Lord, eighteen hundred and seventy, any tract of land has been platted with the view of incorporating said tract of land as a town; and where, with the view of locating the county-seat of any county upon said tract of land in said township, a public square has been donated and made part of the plat of the said tract of land, with the idea of locating the county court-house upon said

public square; and when for the period of sixty years, said public square has never been used for the purpose of building a court-house therein; and when, for the period of sixty years, the said tract of land so platted has become an incorporated town; and when, for the period of sixty years, no county-seat of any county has been located in the said township, nor upon any tract or plat of land therein,—then, and in that case, on application of persons owning ground adjacent to the said public square to the judge of the circuit court of the county where the same is located, and upon their showing the state of facts set out in the foregoing portion of this act, the judge of the said court shall order the said public square to be vacated, and the lot or tract of land composing it shall vest in those whose deeds show that they are entitled to said lots or tracts of land according to the present records of the county in which such township is located.

[1872 S., p. 12. Took effect without the approval of the Governor December 27, 1872.]

SEC. 3386. Public square—School. 1. Any town in this State, laid off, platted, and recorded, with streets, lanes, alleys, lots, and a public square with no other public use expressed on such plat than "public square" by the donor or grantor; and when the citizens of such town, by common consent of people, and the express consent of the grantor, have taken possession of said public square for educational purposes, and erected thereon lasting and valuable school-buildings; and the citizens being desirous of retaining and occupying the same for educational purposes, and that the same shall be dedicated to such use,—may, by five or more freehold citizens of such town (or, if an incorporated town, by her corporation) petition the board of county commissioners for the proper county, giving a distinct description of the public square to be granted to the public for educational purposes; which petition shall be filed with the county auditor thirty days previous to the sitting of such board; and notice of the pendency of said petition shall be given for the same space of time in a public newspaper printed in said county, if any there be, and by printed or written notices thereof, set up in three public places near the public square mentioned in the petition.

SEC. 3387. Action by county board. 2. If no opposition be made to such petition, the board of county commissioners may grant the prayer of petitioner or petitioners, as the case may be, and declare the same dedicated for educational purposes, in accordance with the petition, and to have the same effect as if said public square had been so marked and dedicated upon the original plat of such town. But if opposition be made before the board of county commissioners before final action had, such application shall be continued until the next term of the board, when, if the

objector consent to such petition, or if two-thirds of all the real estate holders of the town petition therefor, the board shall grant the prayer of the petition.

ARTICLE 6—ANNEXATION OF TERRITORY.

SEC.		SEC.	
3388.	Of lots and out-lots.	3390.	Duty of county board.
3389.	Of lands not platted.	3391.	Lost plat.

[1857, p. 73. Approved and in force March 5, 1857.]

SEC. 3388. Of lots and out-lots. 48. When two-thirds of the owners of a tier of out-lots adjoining an incorporated town shall sign a petition asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of said town shall cause said petition to be recorded, and make an order that said tier of out-lots shall thereafter be included in and constitute a part of said corporation. Whenever there shall be lots laid off and platted adjoining to or within such town, and a record of the same is made in the recorder's office of the proper county, the board of trustees may, by a resolution, extend the boundary of such town so as to include such lots, whether improved or not; and the lots thus annexed shall thereafter form a part of such town, and be within the jurisdiction of the same. A copy of such resolution, with plat or map of survey defining the metes and boundaries of such addition, shall be immediately filed and recorded in the office of the recorder aforesaid, and said tier of out-lots and said lots annexed, as last specified, shall be included in and constitute a part of said corporation, and the inhabitants residing thereon, and owners thereof, shall be subject to all the laws and regulations, and entitled to all the privileges, of said corporation.

1. This section authorizes the annexation of *contiguous* platted territory, 20 Ind. 272; 72 Ind. 161. Lots laid out or out-lots in a congressional section of land are not town lots or additions thereto. They are not entitled to record; and the attempt of the board of town trustees to annex them is a nullity, 47 Ind. 274. See § 3165, *notes* 3, 5 *and* 8.

2. *Motive* of town in annexing territory, § 3195, *note* 2. *Non-contiguous* territory, § 3195, *note* 2. *Injunction*, § 3195, *notes* 2 *and* 6. *Quo warranto*, § 3195, *note* 4. *Eminent domain*, § 3195, *note* 7.

Petition.

To the Board of Trustees of the Town of ———:

The undersigned hereby state that they are two-thirds of the owners of the following tier of out-lots adjoining said town of ———, of the State of Indiana, to wit: Beginning in the center of Main street of said town where it ends at the east corporate limits thereof, running thence east sixty rods; thence south forty rods, and thence west sixty rods, to said east boundary line. And they ask that the corporate limits and jurisdiction of said town be extended so as to include said out-lots.

[Signed.]

———

Journal Entry.

Whereas, A. B. and others have presented the following petition to this board, to wit: [*Set out the petition literally*]; and

Whereas, this board finds that the statements contained in said petition are true; therefore

Be it resolved by the board of trustees of the town of ——— that the corporate limits and the jurisdiction of said town be and they are hereby extended so as to include said tier of out-lots, to wit: Beginning in the center of Main street of said town, where it crosses the eastern boundary line thereof, running thence east sixty rods, thence south forty rods, and thence west sixty rods to said east boundary line.

Resolution Extending Boundaries without Petition.

Whereas, the following described territory hereinafter described, adjoining this town of ———, of the county of ———, and State of Indiana, has been laid off in lots and been platted, and a record of the same has been made in the recorder's office of said county; therefore

Be it resolved by the board of trustees of said town of ——— that the corporate limits of said town be and the same are hereby extended over said territory as follows, to wit: [*Describe the line, beginning with the present corporate limits.*] And the territory enclosed within said boundaries be and the same is hereby annexed to and shall be and form a part of said town; and the jurisdiction of said town be and is hereby extended over the same. The clerk of this town is hereby directed to file a certified copy of this resolution, accompanied by the map of said territory now before this board, in the office of the recorder of said county.

[1 R. S. 1852, p. 482. Approved June 11, 1852, and in force May 6, 1853.]

Sec. 3389. Of lands not platted. 51. When any town shall desire to annex contiguous territory thereto, not platted or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing, by metes and bounds, the territory proposed to be attached; which shall be verified by affidavit. Such trustees shall give thirty days' notice, by publication in a newspaper printed in such town, if any; otherwise, in the county or, if none, then by posting up such notice in five or more public places within the corporation. A copy of such notice shall be served on the owner or owners of such territory, if known and residents of the county.

1. This section is not void for uncertainty or inconsistency with other provisions of law; and under it the county board, upon petition, may order the annexation of any territory adjacent to the town, 20 Ind. 272, § 3196, *note* 1.

2. The *reasons* for the annexation should be set forth in the petition, 20 Ind. 272, § 3196, *note* 2.

3. It is not necessary that the notice of the intended application contain the *names* of all the holders of lands intended to be embraced in such annexation if the territory is sufficiently described by metes and bounds, 18 Ind. 203; 20 Ind. 272; 91 Ind. 541.

4. The county commissioners have no *jurisdiction* to annex platted territory; but in a complaint for an injunction to restrain the collection of town taxes levied upon land annexed to the town, if it show that the annexation was made by order of the board, and that the property was laid off into lots, and does not show that the officers of the town did not also adopt a resolution annexing the territory, it is bad. The presumption is in favor of the legality

of the annexation; and the officers of the town may have adopted both remedies. An averment that the town officers had not adopted a resolution prior to the petition to the board is not sufficient to show that none was adopted prior to the assessment of the alleged tax, 72 Ind. 161, § 3196, *note* 4.

5. The *proceedings* of the board, if jurisdiction was acquired, can not be questioned *collaterally*, 91 Ind. 541. If the *petition* contains enough to show that the subject-matter is within the jurisdiction, its sufficiency in other respects can not be questioned collaterally, nor can the formality of the proceedings of the trustees of the town, 91 Ind. 541. Personal *notice* served on the known residents of the county whose lands it is sought to annex is, as to them, necessary to give jurisdiction, and a failure to do so renders the proceedings void upon collateral attack, 91 Ind. 541. If several owners of land unite in a complaint to enjoin an incorporated town from collecting taxes upon their lands, upon the ground that no notice at all had been given, there can be no separate decree in favor of one of the plaintiffs, 91 Ind. 541. Whether territory is or is not *contiguous* to the corporate limits is a question of fact for the decision of the board of commissioners and their decision is final unless appealed from, 91 Ind. 541, § 3196, *notes* 3 *and* 4.

Plat, § 3196, *note* 5; *survey*, § 3196, *note* 5; *presentation of petition*, § 3196, *note* 5; *petition*, § 3196, *note* 6; *notice*, § 3196, *note* 7; *acquiescence*, § 3196, *note* 8.

Forms.

[Under § 3196, forms for a city have been prepared, which can be modified for a town. The president of the board of trustees can be substituted for the mayor.]

Sec. 3390. Duty of county board. 52. The board of county commissioners, upon the reception of such petition, shall consider the same, and shall hear the testimony offered for or against such annexation; and if, after inspection of the map, and the testimony being heard, such board is of the opinion that the prayer of such petition should be granted, it shall cause an entry to be made on the order-book, specifying the territory annexed, with the boundaries thereof according to the survey; which entry, or an attested copy thereof, shall be conclusive evidence, in all courts, of such annexation.

Duty of board of commissioners to act, § 3197, *note* 1; *judicial notice*, § 3197, *note* 2. Board of commissioners can *act only* at a *regular meeting*, § 3197, *note* 4. *Appeal* lies, § 3197, *note* 5. *School-house* annexed, § 3197, *note* 6. *Taxation*, § 3197, *note* 7. *Illegal taxes*, § 3197, *note* 8. *Agricultural lands*, § 3197, *note* 9.

Order-Book Entry.

[See form under § 3197, which can be modified.]

[1869 S., p. 33. Approved and in force April 27, 1869.]

Sec. 3391. Lost plat. 11. When the original survey and plat of any incorporated town of this State have been, or may hereafter be, lost or destroyed, the board of trustees of such town may order a survey and plat of said town to be made. And when such survey and plat is made, and adopted by a majority of said board of trustees, the same shall be presented to the board of commissioners of said county, with an affidavit that the original survey and plat are

lost; whereupon the said board of commissioners shall order the same to be recorded by the recorder of said county as the survey and plat of such town.

Resolution.

Whereas, the original survey and plat of this town has been lost [*or*, destroyed]; and

Whereas, the town civil engineer, pursuant to an order of this board, has made a survey and plat of this town; therefore

Be it resolved by the board of trustees of said town of ——— that said survey and plat be and the same is hereby adopted by said board as the survey and plat of said town; and the town clerk is hereby ordered to present said survey and plat to the board of commissioners of the county of ———, and State of Indiana, with an affidavit that the original survey and plat is lost [*or*, destroyed].

Affidavit.

State of Indiana, County of ———, *ss.*

X. L., upon his oath, says that he is the clerk of the town of ———, of said county and State; that the original survey and plat of said town has been lost [*or*, destroyed]; that on the ——— day of ———, 18—, the board of trustees of said town ordered a new survey and plat of said town to be made, which was made as so ordered; and that said survey and plat was on the ——— day of ———, 18—, adopted by said board by a majority of its members, the original of which survey and plat so adopted is hereto annexed, marked "Exhibit A."

X. L.

Subscribed and sworn to before me this ——— day of ———, 18—.

[Notary Seal.]

R. U.,
Notary Public.

Board of County Commissioners' Order-Book Entry.

Ordered that the survey and plat of the town of ———, of this county, be recorded by the recorder of this county in the record of deeds in his office as the survey and plat of said town.

ARTICLE 7—SEWERS.

SEC.

3392. Power over sewers.
3393. Proceedings to establish and construct.
3394. Order to appraisers.
3395. Majority may act.
3396. Schedule filed—Construction.
3397. Apportionment of cost.
3398. Collection of cost.
3399. Penalty for non-payment.
3400. Payment, how enforced.
3401. Officers' fees.
3402. Superintendent—Engineer.
3403. Town may pay part of cost.
3404. Terms of letting.
3405. Protection of sewer—Tapping.
3406. Intention of act.

[1867, p. 205. Approved and in force March 11, 1867.]

SEC. 3392. Power over sewers. 1. The board of trustees of any incorporated town in this State shall have full power and authority to construct and repair any sewer along any street or alley in any incorporated town in this State, or along any part of a street, block, or square in any incorporated town in this State; and they

shall be the sole judges of the necessity and utility of the construction of such sewer.

NECESSARY STEPS TO BE TAKEN AND THEIR ORDER.

1. Acquisition of title to street or alley in which sewer is to be constructed.

2. Resolution ordering construction of sewer, designating its beginning, route, terminus, depth below grade, size, and materials to be used, § 3393.

3. Appointment of three appraisers, freeholders and voters, § 3393; and notice to them of their appointment, § 3394.

4. Examination by appraisers, estimate of benefits and damages, and sworn report to board, accompanied by a schedule showing the lots assessed, § 3393.

5. Recording assessment and construction of sewer, § 3396.

6. Apportionment of costs to the lots benefited, an assessment sheet made out and recorded in the town records, § 3397.

7. Copy of assessment made out by the town clerk, certified to and placed in hands of treasurer, who publishes a notice thereof, and proceeds to collect it the same as if it were a tax, § 3398. If the assessment due is not paid, the lien thereof may be enforced in the circuit court, § 3400.

NOTES.

1. See § 3106, clauses 40 and 43, *notes*.

2. A city or town may purchase land, or acquire an easement over land for a sewer out-let, even though such land is situated beyond the limits of the, town, 121 Ind. 154; 102 Ind. 372.

SEC. 3393. Proceedings to establish and construct. 2. Whenever the board of trustees of any incorporated town in this State shall determine to construct any sewer authorized by this act, such board of trustees shall, upon their records, specify and determine the place of beginning and termination of such sewer, its route, course, and distance, and shall also determine and specify, in their said records, the depth below the grade at which such sewer shall be sunk, the size or diameter of the same, and of what materials the same shall be constructed. And thereupon such board of trustees shall appoint three appraisers, freeholders and voters in said town, not in any way interested in the proposed sewer, whose duty it shall be to examine all the in-lots, out-lots, and parts of in-lots and parts of out-lots in said town, that would in any manner be benefited by the construction of the proposed sewer; and shall assess the amount of benefits to each lot or parts of lots, that will result thereto by the construction of such sewer. And said appraisers shall make out a schedule of said lots or parts of lots, with the said appraisement thereto; and shall append to such schedule their affidavit that the said assessment is, in all respects, a true and impartial assessment of the benefits resulting to each lot and part of lot in any way benefited by the said proposed sewer, according to the best of their judgment. And the said appraisers shall file said schedule with the clerk of the board of trustees of such town, who shall record the same in the records of said board of trustees; and from and after the recording of said schedule above directed,

the assessments therein made shall be a lien upon the lots and parts of lots, respectively, against which they are made, to be in no manner divested only as hereinafter provided.

Order.

Resolved by the board of trustees of the town of ———, of the State of Indiana, that a sewer be constructed in the center of Fourth street of said town, from North street to Eel river. Said sewer shall be constructed six feet below the present established grade of said Fourth street, shall have a two-foot inside circular diameter, and be constructed of two rings of hard brick laid in lime mortar, so as to make the walls thereof nine inches thick. A. B., C. D., and E. F., freeholders and voters of said town, not in any way interested in the proposed sewer, are hereby appointed appraisers to examine all the property in said town that will be in any manner benefited by the construction of said sewer, and to assess the amount of benefits to each lot or parts of lots that will result thereto by the construction of said proposed work.

Report of Appraisers.

To the Board of Trustees of the Town of ———:

The undersigned, appraisers appointed by you to assess the benefits accruing to property of said town by reason of the construction of a sewer in the center of Fourth street of said town, from North street to Eel River, respectfully report that they have viewed the premises, and make the following assessment of benefits to lots and parts of lots within said town, to wit:

Name of Owner.	No. Lot.	Addition.	Amount of Benefits.

A. B.,
C. D.,
E. F.

State of Indiana, County of ———, ss:

A. B., C. D., and E. F., upon their oaths say that the above and foregoing assessment is, in all respects, a true and complete assessment of the benefits resulting to each lot and parts of lots that will be in any way benefited by the construction of the said proposed sewer, according to the best of their judgment.

A. B.,
C. D.,
E. F.

Subscribed and sworn to before me this ——— day of ———, 18—.
[Notary Seal.]

L. U.,
Notary Public.

Sec. 3394. Order to appraisers. 3. Before said appraisers shall proceed to discharge their duties as in the preceding section, said board of trustees shall cause to be issued to them a certified copy of their order, giving the commencement, termination, distance, route, depth below the grade, and the materials of which such sewer is to be constructed, and of their appointment.

Sec. 3395. Majority may act. 4. The majority of said appraisers shall be competent to act; and two of them concurring in the same proposition, such concurrence shall be taken as the decision of said appraisers on such proposition.

Sec. 3396. Schedule filed—Construction. 5. As soon as the said schedule of assessment, made by the said appraisers, is returned and recorded in the records of said board of trustees, such board of trustees shall proceed and cause the said sewer to be constructed in accordance with their previous plans and specifications, as near as can be done, making such alterations from the original plan, only, as the necessity of the case or the better construction of the work may seem to require.

1. The board may let out the contract to the lowest and best bidder; or construct it by employing laborers for that purpose.

2. An assessment for the construction of a sewer is within the jurisdiction of the city or town, and can not be declared void in a *collateral attack* to quiet title to land sold for the assessment, unless it appears there was no authority over the particular improvement ordered or the particular property assessed. Such a person is not entitled to a general decree quieting his title while any part of the assessment is due. One who would save his title must pay, or tender payment of, the lien. Unless the assessment is wholly void, he is not entitled to a general decree, 120 Ind. 520.

Sec. 3397. Apportionment of cost. 6. As soon as the board of trustees ascertain the cost of the construction of such sewer, they shall make a division of the cost of said sewer among the owners of said lots and parts of lots so assessed for the construction of such sewer; and as the whole amount of assessment made for the construction of said sewer, so shall the lots and parts of lots owned by each individual be to the amount each individual shall pay upon each lot or part of lot so owned by him for the construction of said sewer. And the said board of trustees shall cause a list of the owners' names of said lots or parts of lots, with the description of said lots attached thereto, and append the amount in dollars and cents so found as being the share properly chargeable against each lot and part of lot so owned by any one person, to be made out by the clerk of said board of trustees, and cause it to be recorded in the records of the said board of trustees of such town.

Assessment.

Whereas, the whole cost of the sewer in the center of Fourth street of this town, from North street to Eel River, is $———; and

Whereas, said town should and will pay on the construction thereof the sum of $———, leaving a remainder of $——— to be paid by the owners of property heretofore assessed with benefits by reason of the construction of said sewer; therefore

It is ordered that the owners of said lots so assessed be required to pay ——— per cent. on the amount of their assessment, as follows, to wit:

Name of Owner.	No. Lot.	Addition.	Amount of Benefits.	Amount required to pay.

Sec. 3398. Collection of costs. 7. The clerk of the board of trustees of said town shall make out, under his hand and the seal of said town, a certified copy of said list, showing the amount chargeable against each lot and part of lot in said town, and deliver the same to the treasurer of said town, which shall be full authority for him to receive and collect the amount specified in said list; and the said treasurer of said town shall have full power and authority for collecting such sums, and is vested with all the power and authority in the collection of the same that the marshal of such town has in the collection of taxes levied by said town, and shall be governed by the same rules and regulations, so far as applicable, that county treasurers are in collecting taxes in this State. And the owners of said lots or parts of lots shall have sixty days from the time such list is placed in the hands of such treasurer, within which they may pay the same without cost. Such treasurer, as soon as he receives such list from the clerk of said town, shall cause notice to be given thereof, either by publication of such list in a weekly newspaper printed in said town, or by posting up three copies of said list in three public places in said town.

Notice.

Notice is hereby given that on the ——— day of ———, 18—, I received from the clerk of the town of ———, of the State of Indiana, a list of the owners of lots and parts of lots assessed with benefits by reason of the construction of a sewer in the center of Fourth street of said town, from North street thereof to Eel River, wherein it appears that the following persons are assessed upon the lots described with the amounts set opposite thereto, viz.:

Name of Owner.	No. Lot.	Addition.	Amount.	

All such persons are required to pay the amounts severally due from them by the ——— day of ———, 18—.

Dated ———, 18—.

R. Z.
Treasurer of the Town of ———.

Sec. 3399. Penalty for non-payment. 8. At the expiration of sixty days from the time such list is placed in the hands of the said treasurer, he shall add thereto ten per cent. on the amount so

charged against each lot and part of lot remaining at that date, which shall be collected as a penalty for non-payment within the sixty days; and from that date there shall be charged six per cent. interest on all remaining unpaid.

SEC. 3400. Payment, how enforced. 9. The said lien created by this act on the said lots or parts of lots by the assessment shall be in favor of the said town in which such lots are situated, and the same may be enforced by an action in the name of the town in any court of competent jurisdiction; and in such action the presumption of law shall be that all the provisions of this act have been complied with; and the only defense that the defendant shall be allowed to set up in said action shall be that he has paid the amount with which said lots or parts of lots are charged, and that said lots or parts of lots are not benefited to the amount assessed against the same.

No personal judgment can be rendered against the delinquent owner for non-payment of the assessment.

Complaint.

In the ——— *Circuit Court.* ——— *Term*, 18—.

The Town of ———, *vs. A*——— *B*———. *No.* ——.

The town of ———, of the county of ———, and State of Indiana, complains of A. B., and says: That on the ——— day of ———, 18—, at a regular meeting thereof, the board of trustees of said town ordered the construction of a sewer in the center of Fourth street of said town, extending from North street to Eel river, specifying in their records the place of beginning and termination of said sewer, as aforesaid, its route, course, distance, depth below the grade at which it should be sunk, the size or diameter of the same, and the materials of which it should be constructed; and at the same time appointed three persons appraisers, who were freeholders and voters of said town, not in any way interested in the proposed sewer, to examine all the property of said town that would in any manner be benefited by the construction of the proposed sewer, and to assess the amount of benefits to each lot or part of a lot that would result thereto by the construction of said sewer. That said appraisers on the ——— day of ———, 18—, filed a report and schedule of said lots and parts of lots with an appraisement thereto attached, of their doings in said matter, with the clerk of said town, which report was duly verified by their affidavits, and said clerk immediately recorded said report, schedule and appraisement in the records of said town. That after the filing of said report said board of trustees caused said sewer to be constructed as determined in their written order aforesaid; and as soon as they ascertained the cost of the construction of said sewer they made a division of the cost thereof among the owners of said lots and parts of lots so assessed for the construction thereof, on the following basis, to wit: As the whole amount of the assessment, which was $———, made for the construction of said sewer was to the whole cost of the construction thereof, which was $———, so they assessed the lots and parts of lots owned by each individual with the amount each individual should pay upon each lot or part of lot so owned by him. That among the lots so assessed with benefits was lot 16 of Blair's addition to said town, then and now owned by said defendant, which lot was assessed with $——— benefits. That said board, in making a division of the cost of constructing said sewer, as aforesaid stated, assessed to said lot the sum of $———. That immediately upon making the division of said cost among the lots assessed with benefits, as aforesaid, said board of trustees caused a list of the owners' names of said lots and parts of lots, with a description of said lots attached thereto, and appended the amount in dollars and cents so found as being the share properly

chargeable against each lot and part of lot so owned by any one person, to be made out by their clerk, and caused it to be recorded in their records, a copy of which is filed herewith, marked "Exhibit A," and made a part hereof. That the clerk of said board made out, under his hand and the seal of said town, a certified copy of said list, showing the amount chargeable against each lot and part of lot in said town, and on the ——— day of ———, 18—, delivered the same to the treasurer of said town. That said treasurer, as soon as he received said list from the clerk of said town, as aforesaid, immediately caused a notice to be given thereof by publication of said list in the *Argus-News*, a weekly newspaper printed in said town. That at the expiration of sixty days from the time that said list was placed in the hands of said treasurer said sum of $———, so assessed on said lot 16, yet remained unpaid, and the same is now due and unpaid.

Wherefore the plaintiff demands judgment for said $———, with ten per cent. penalty thereon, and with six per cent. interest on said $———, and penalty from the ——— day of ———, 18—; and prays that the lien thus created on said lot be foreclosed and the same be ordered sold to satisfy the amount found due by reason of said assessment.

C. D.,
Attorney for the Plaintiff.

Sec. 3401. Officers' fees. 10. The costs of appraisers and town officers in the collection of said funds for building said sewer, and in making provisions for building the same, shall be paid out of the treasury of said town as other fees.

Sec. 3402. Superintendent—Engineer. 11. The sewers constructed under this act shall be done under the direction of the board of trustees, and to their satisfaction and acceptance; and they may appoint an agent to oversee the same, and also employ an engineer to lay off and make specifications and plans of the work.

Sec. 3403. Town may pay part of cost. 12. The board of trustees shall have a power to pay a part of the construction of said sewer out of the general funds or treasury of said town, when, in their judgment, the same would be fair and equitable, and when they so determine, they shall order and specify what part of the construction of said sewer shall be paid out of the general funds of such town, before making the *pro rata* dividend upon said assessment on said lots or parts of lots to be benefited; and shall, in that case, take into consideration, in making said *pro rata* dividend, the amount to be paid out of the general funds of said town, and making said amount to be paid by the owners of the lots and parts of lots less the amount paid out of the general funds of said town.

Sec. 3404. Terms of letting. 13. In letting the said work the said trustees shall specify, and agree with the contractor, as to the time and manner of payment therefor.

Sec. 3405. Protection of sewer—Tapping. 14. The board of trustees of such town shall, by an ordinance, provide for the protection of said sewer and the manner and terms that any person or persons may tap, open, or intersect said sewer; and no person

shall be allowed to tap, open, or intersect, or in any manner interfere with the same, without first procuring a permit from said board of trustees.

SEC. 3406. Intention of act. 15. It is not the intention of this act to take away the power that the board of trustees of incorporated towns now have, by law, to build sewers and pay for the same out of the general funds, of such town, but the intention is to create an additional means for construction of sewers, whereby those most benefited by their construction will pay most therefor.

CHAPTER XXIV.

ARTICLE 7—TOWN BUILDING.

SEC.
3493. May be incorporated.
3494. Notice.
3495. Written statement.
3496. Statement to be recorded.
3497. Twenty may organize.
3498. When incorporated.
3499. Powers.
3500. Records—Evidence.
3501. Trustees may convey.

[1858 S., p. 26. Approved and in force December 22, 1858.]

SEC. 3493. May be incorporated. 1. Where any persons may have heretofore associated themselves together for the purpose of building a town within any county in this State, they may be incorporated as hereinafter provided.

SEC. 3494. Notice 2. Notice of the intention to organize such corporation, and of the time and place of holding the first meeting, signed by one or more persons, shall be published in some newspaper of the county where such town has been located, or, if none, then in some newspaper of an adjoining county, for at least twenty-one days before such meeting is held.

SEC. 3495. Written statement. 3. At such first meeting, a temporary or permanent presiding officer and secretary shall be selected, and a written statement prepared specifying the object of such association, its name, and the time and manner of giving such notice, to be signed by such presiding officer and secretary.

SEC. 3496. Statement to be recorded. 4. Such statement and a copy of such published notice shall be filed in the office of the recorder of such county, and, by him, shall be recorded in the record of deeds, for which he shall be entitled to a fee of two dollars.

SEC. 3497. Twenty may organize 5. It shall not be necessary for a majority of the members of such association to be present at such first meeting, but any twenty or more shall be sufficient to hold the meeting and organize the corporation.

SEC. 3498. When incorporated. 6. From the time of filing such statement as aforesaid, such association shall be deemed and held a body corporate and politic by the name selected as aforesaid,

with full powers to sue and be sued, contract and be contracted with, have a common seal, make laws for their own government, and may exercise all such other powers as are incident to corporations, for the purpose of carrying into effect the object of their association.

Sec. 3499. Powers. 7. Such corporation may acquire, by purchase or otherwise, real estate, and may hold and convey the same, or any part thereof, in such manner as it may see fit; but nothing herein contained shall be so construed as to exempt such lands from taxation as other lands are taxed.

Sec. 3500. Records—Evidence. 8. Such corporation shall keep a record of its proceedings; and such record or copies thereof, duly attested by its clerk or secretary, may be read in evidence in all suits at law where the interests of such corporation are concerned.

Sec. 3501. Trustees may convey. 9. Wherever any persons have associated for the purpose aforesaid and have purchased real estate prior to the passage of this act, and have taken deeds to one or more persons in trust for such association, and such association shall hereafter become incorporated under the provisions of this act, then such trustees may and shall convey to such corporation all such real estate, and shall assign to such corporation all such title-bonds as may have been executed to them in trust for such association; and such conveyance and assignment shall pass as good and perfect a title to such corporation for such lands as if such association had been incorporated at the date of the execution of such deeds and said deeds had been executed to the corporation.

CHAPTER XXXIII.

LIBRARIES.

ART.
1. *County.*
2. *City, Town, or Village.*
3. *City or County.*

ARTICLE 1—COUNTY.

SEC.
3782. How established.
3783. Annual appropriation.
3784. Trustees—Duties.
3785. Who may use books.
3786. By-laws—Fines.
3787. Duties of librarian.
3788. May loan money.
3789. How loans made.
3790. Duties of treasurer.

[1 R. S. 1852, p. 353. Approved June 18, 1852, and in force May 6, 1853.]

SEC. 3782. How established. 1. To establish and maintain a public library in each of the several counties, for the use of the inhabitants thereof, there shall be reserved ten per cent. of the net proceeds of the sale of all lots within the town where the county-seat is situate, sold as the property of such county, and ten per cent. upon all donations made to procure the location of such county-seat; and the county commissioners shall make the necessary order for the collection and payment of the same.

SEC. 3783. Annual appropriation. 2. The board of commissioners doing county business may, at their June session in each year, appropriate a sum not less than twenty nor more than seventy-five dollars for the purchase of books, maps, and charts for such library; and the same shall be paid to the treasurer of the library by the treasurer of the county, upon the certificate of the auditor thereof.

SEC. 3784. Trustees—Duties. 3. The clerk, auditor, and recorder shall have the charge of such library, and are hereby constituted trustees for that purpose. They shall elect one of their number treasurer, and a suitable person librarian, and shall prepare a proper room, with the necessary shelves and cases, within some county office or building, when practicable, to place and safely keep such library. They shall cause all moneys appropriated or belonging to the library to be expended in the purchase of books,

charts, and maps, and report to the board of county commissioners, in June annually, the kind and number of books purchased, with the cost thereof. Each of said officers shall be liable on his official bond for the performance of duties herein required of him.

The clerk, auditor, and recorder are *ex officio* trustees of the county library, and are authorized by § 3788 to loan the surplus library fund for any term not exceeding four years, with seven per cent. interest, payable annually in advance. Any one borrowing said fund and executing his note and mortgage therefor is estopped from denying the corporate existence of the library or the authority of the trustees, 91 Ind. 229.

Sec. 3785. Who may use books. 4. Every inhabitant of the county giving satisfactory evidence or security for the safe-keeping and return of books, shall be entitled to take and use the same upon the proper application to the librarian. But no one person shall, at the same time, have more than two volumes of books, nor for a longer period than forty days without returning such books to the library.

Sec. 3786. By-laws—Fines. 5. The trustees shall establish by-laws and rules for the regulation of such library, and the same shall be placed at a conspicuous point in the library-room, for the inspection of visitors. All fines or forfeitures accruing from the violation of such by-laws shall be recoverable in an action before any court of competent jurisdiction, in the name of the State of Indiana, for the use of such library; and the librarian shall be a competent witness in such action, and the entries made upon his books, in relation to such library, shall be *prima facie* evidence of the things therein charged.

Sec. 3787. Duties of librarian. 6. The librarian shall make an entry, in a proper book, of each book or map taken, the time thereof, by whom, and when returned. He shall also keep a registry of the fines and penalties assessed, and collect the same by suit or otherwise. At the June session of the board of county commissioners in each year, he shall report the condition of such library, the books added or lost within the preceding year, and the value of the same.

[1861, p. 142. In force March 11, 1861.]

Sec. 3788. May loan money. 1. Any county library that may have been organized under special laws in this State, and yet maintains its organization, and shall have a portion of its funds reserved for replenishing the library from time to time, may loan said surplus fund for any term not exceeding five years, with interest payable annually in advance, at the rate of seven per cent. per annum.

See § 3784, *note*.

Sec. 3789. Loans, how made. 2. Such loans shall be made in the same manner, and in all respects that may be practicable, under the same regulations as the common school funds are now by law managed. The borrower shall be subject to the same liabilities, and the collection thereof enforced in the same manner as said school funds.

Sec. 3790. Duties of treasurer. 3. The treasurer of such library shall, in loaning and collecting the funds of the library, perform the same duties and incur the same liabilities as the county auditor does by existing laws in regard to the same duties in behalf of the school fund; but such treasurer shall be governed by the order of the board of trustees, and be accountable thereto.

ARTICLE 2—CITY, TOWN, OR VILLAGE.

SEC.	
3791.	How established.
3792.	Chairman and clerk.
3793.	Election of directors.
3794.	Statement.
3795.	To be recorded.
3796.	Powers.
3797.	Banking forbidden.
3798.	Directors annually elected.
3799.	By-laws.
3800.	Seal—Assessments—Officers.
3801.	Quorum—Vacancies—Term.
3802.	Donations.
3803.	Stock, as prizes.
3804.	Dissolution—City to manage.
3805.	Tax.
3805*a*.	Tax for reading matter.
3805*b*.	Limitation on tax.
3805*c*.	Town becoming city—Library tax.
3805*d*.	Libraries in large cities.
3805*e*.	Laws repealed.

[1 R. S. 1852, p. 355. Approved February 16, 1852, and in force May 6, 1853.]

Sec. 3791. How established. 1. The inhabitants of any city, town, village, or neighborhood, in this State, or any part of them, whenever they have subscribed the sum of fifty dollars, or upwards, toward the establishment of a public library, may assemble themselves for the purpose of holding an election for directors.

Sec. 3792. Chairman and clerk. 2. If two-thirds of the subscribers are present, they may proceed to choose, by voice, a chairman, who shall preside at that meeting, and a clerk, who shall keep a record of the same.

Sec. 3793. Election of directors. 3. After a chairman and clerk are chosen, the shareholders may proceed to choose, by ballot, seven directors, and to agree upon a name by which their library shall be known. The directors shall appoint one of their number to be president at their meetings, who shall have no other than a casting-vote.

Sec. 3794. Statement. 4. A true statement of the proceedings of such meeting, including the amount subscribed and the number of subscribers present at their meeting, shall be sworn or affirmed to before some justice of the peace of the county, by the chairman or the clerk provided for by the second section of this act [§ 3792],

and filed in the recorder's office; and it shall be the duty of such justice to certify on such statement that it was sworn or affirmed to before him.

Sec. 3795. To be recorded. 5. The recorder of the county shall record the said statement in his book of record, when required.

Sec. 3796. Powers. 6. After such statement shall be duly recorded, the president and directors, and their successors forever, shall be a body corporate and politic, to be known by such name as is registered in the recorder's office. They shall be capable, in law and equity, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or before any judge or judges, justice or justices, person or persons whatsoever, in all manner of suits, actions, plaints, pleas, causes, and demands whatever, in as effectual a manner as any other person or persons, body or bodies corporate or politic, may or can do.

Sec. 3797. Banking forbidden. 7. Nothing contained in this act shall be so construed as to authorize any library company incorporated in this State to issue notes or bills of credit payable to any person or persons or his or their order, or to bearer; nor to deal in any kind of bills of exchange, notes, or due bills whatever.

Sec. 3798. Directors annually elected. 8. Except the first election of directors, the annual election forever thereafter shall be held on the first Monday in January; but if any annual election should be omitted, the directors shall remain in power until the next annual election, and until successors shall be chosen.

Sec. 3799. By-laws. 9. Such library or libraries shall be governed and regulated by such by-laws as may, from time to time, be made by the president and directors of the same, not inconsistent with the constitution and laws of this State, who shall have power to alter, amend, abolish, and renew any such by-law or by-laws at pleasure.

Sec. 3800. Seal—Assessments—Officers. 10. The president and directors shall have power to make a common seal, and the same to alter, break, change, or renew at pleasure. They shall have power to levy a tax on the shareholders, provided such tax do not exceed one dollar on each share in any one year. Nothing, however, in this act shall be so construed as to prevent a majority of two-thirds of the shareholders, attending at their annual meeting, from increasing such tax to any sum not exceeding five dollars on each share in any one year. They shall have power to appoint a treasurer and librarian, and the same to remove at pleasure.

Sec. 3801. Quorum—Vacancies—Term. 11. A majority of the directors shall be necessary to form a quorum. They shall have power to fill vacancies that may happen in their own body. And the director or directors by them elected shall serve until the next annual election thereafter, and until others are elected in their stead.

Sec. 3802. Donations. 12. They shall have power to receive, by donation, any books, moneys, papers, lands, or any other thing or things; and such donation, or the income or the interest thereof, shall be applied to no other purpose than to the true interest and objects of the library on which it was bestowed, according to the true intent and meaning of this act.

[1873, p. 176. Approved and in force March 8, 1873.]

Sec. 3803. Stock as prizes. 8. The common council of such city shall have the power, in their discretion, to cause the distribution and transfer of shares of stock held by the city, as prizes to the children of the public schools in the city for good behavior and scholarship.

Sec. 3804. Dissolution—City to manage. 9. Upon the dissolution or forfeiture of the franchises of such library association in which any city may have purchased stock, and is, at the time of such dissolution or forfeiture, the holder of one-third of the shares of the whole stock, the property of such association shall become the property of the city, for the free use and enjoyment of the inhabitants of such city, under regulations to be prescribed by the common council; and the common council shall thereafter control such library, and shall have power to increase the same, and levy and apply the tax provided for in section seven of this act [§ 3815], to the increase and expenses of such library.

[1885 S., p. 9. Approved and in force February 18, 1885.]

Sec. 3805. Tax. 1. In any township in which there has been, or may hereafter be established, by private donation, a library of the value of one thousand dollars or more, for the use and benefit of all the inhabitants thereof, the township trustee of such township shall annually levy and collect not more than one cent on the one hundred dollars upon the taxable property within the limits of such township; which shall be paid to the trustees of such library, and be applied by them to the purchase of books for said library, and may, with the consent of the board of commissioners of the county, where it has become necessary to erect or enlarge a library building, annually for such period as may be necessary, levy and collect not more than five cents on the one hundred dollars upon the taxable property of said township, for not more than three years successively, which shall be expended by such trustees in the erection or enlargement of a library building. [El. Sup. § 1005.]

[1883, p. 200. Approved and in force March 8, 1883.]

Sec. 3805*a*. Tax to pay for reading-matter for library association. 1. Whenever any library or library and reading-room combined, established under an act entitled "An act to establish public libraries," approved February 16, 1852, and the acts supplementary thereto and amendatory thereof, shall be located within the corporate limits of any incorporated town of this State, the president and board of directors of such library may file a written request and agreement, duly signed by them or a majority of them, with the board of trustees of such town, agreeing therein to keep and maintain such library or library and reading-room open and free to the use and benefit of all the inhabitants of such town, and requesting the board of trustees of such town to levy a tax upon the taxable property of such town, to be applied in the purchase of reading-matter for such library. If, in the judgment of the board of trustees of such town, the books and other reading-matter of such library is worth, at the time of filing such agreement and request, the sum of seven hundred and fifty dollars or more, they may annually levy a tax upon all the taxable property of said town of not less than one-fourth nor more than three-fourths of one mill upon the dollar, to be collected as other taxes of such town are collected. Such tax, when collected, shall be paid over to the president and directors of such library, and shall be by them expended for the purpose of purchasing reading-matter for such library, and for no other purpose; and they shall keep such tax separate from all other funds, and, in a proper book kept by them, shall show the amount of tax received, to whom and when paid out, the amount, and upon what purchase. From the time of the first receipt of any tax under this act, and so long thereafter as the trustees of such town shall annually levy and collect or cause to to be collected and paid over a tax under the provisions of this act for the purpose aforesaid, it shall be the duty of the president and directors of such library to keep the same open and free to the use and benefit of all the inhabitants of such town, subject only to such reasonable and proper restrictions as they, the president and board of directors, may impose for the preservation and usefulness of the same. But if the trustees of such town shall during any year fail or refuse to levy and collect a tax for the purpose aforesaid, under the provisions of this act, then the president and directors of such library shall not be longer required to keep the same open for the use and benefit of the inhabitants of such town, and the books purchased with the proceeds of such tax shall be the property of such library association, the same as if derived from any other source, after the receipt of any tax under the provisions of this act, and so long as the trustees of any such town shall annually levy and collect a tax or cause the same to be collected and paid over for the purpose aforesaid. If the president and board of directors of any such library shall fail or refuse to

keep the same open and free to the use of all the inhabitants of such town, subject to the restrictions aforesaid, then all of the property of such library association, real estate excepted, shall become the property of such town, and be subject to the control and directions of the trustees thereof, and they may then levy and collect the tax provided for in this act, to be expended as well in keeping and maintaining such library as supplying reading-matter therefor. [El. Sup. § 1002.]

Sec. 3805*b*. Limitation—Tax for one association in any one year. 2. The trustees of any town shall have no authority by virtue of this act to levy and collect a tax for more than one library association in any one year. [El. Sup. § 1003.]

[1885, p. 120. Approved and in force April 2, 1885.]

Sec. 3805*c*. Town becoming city—Library tax. Whenever the board of directors of a library heretofore situate[d] within the limits of any incorporated town may have filed the agreement and request with the board of trustees of said town, provided for in an act entitled "An act supplementary to an act to establish public libraries," approved February 16, 1852, approved March 8, 1883, and the board of trustees of such library in pursuance of such request and agreement and in accordance with said act, and such town may afterward have become incorporated as a city, the common council of such city shall have all the powers to levy tax, and do all other things granted by said act above named to trustees of towns; and all the provisions of said act applicable to such library and its relations to the town before its incorporation as a city shall, after such incorporation, be applicable to such library and its relations to such city. [El. Sup. § 690.]

[1889, p. 432. Became a law by lapse of time, without the Governor's approval, March 11, 1889.]

Sec. 3805*d*. Libraries in large cities. The boards of school commissioners in cities having thirty thousand or more inhabitants according to the United States census for the year 1870 is hereby authorized to levy a tax each year not exceeding two-fifths of a mill on each dollar of taxable property shown by the certificate of the auditor of the county in which such city is situated of taxable, real and personal property, returned by said auditor to said board of school commissioners as required by law for the support of free libraries in connection with the common schools of such city, and to disburse any and all revenues raised by such tax levy in the purchase of books for and in fitting up of suitable rooms for such libraries, salaries to librarians and other expenses necessarily incident to the maintenance of such library; also to make and enforce such regulations as they may deem necessary for the taking out of and returning to and for the proper care of all books belonging to

such libraries, and to prescribe penalties for the violation of such regulations. [El. Sup. § 692.]

Sec. 3805*e*. Laws repealed. All laws and parts of laws inconsistent with this act are hereby repealed. [El. Sup. § 692.]

School boards in cities having ten thousand inhabitants and over, may maintain free public libraries, §§ 4524 to 4533.

ARTICLE 3—CITY OR COUNTY.

SEC.
3S06. Incorporation.
3S07. Instrument of association.
3S08. Recording--Powers--Exempt from taxation.
3S09. Gallery of Art—Reading-room—Park.
3S10. Stock.
3S11. Voting stock.
3S12. Museum.
3S13. Fines—Costs—Judgment without relief.
3S14. Corporations may take stock.
3S15. Cities may take stock.

[1881 S., p. 588. Approved and in force April 7, 1881.]

Sec. 3806. Incorporation. 1. Whenever any number of persons, not less than seven, shall desire to associate themselves together for the purpose of establishing and maintaining a public library in any city or county in this State, for the general benefit and advantage of all the inhabitants of such city or county, it shall be lawful for such persons to become incorporated under this act in the manner hereinafter provided.

Sec. 3807. Instrument of association. 2. Whenever any persons shall desire to become incorporated under this act, for the purpose aforesaid, they shall, by an instrument in writing, set forth the objects of the association, the corporate name to be adopted, the names and places of residence of the incorporators, and a description of the corporate seal; and they shall also, in said instrument, provide the manner in which, in case of the death, resignation, or removal for any cause of any of the original incorporators, their successors shall be selected, so that the number of the members of such incorporation shall never be less than the original number. They shall, also, provide, in said instrument, what officers shall be elected by such corporation, and the time and manner of their election; and shall, also, provide therein, generally, in what manner the business of said corporation shall be conducted. Which instrument shall be signed by all the proposed incorporators, and filed in the office of the recorder of the county in which such library or reading-room is proposed to be established.

Sec. 3808. Recording—Powers—Exemption from taxation. 3. Upon the filing of such instrument in the proper recorder's office, it shall be the duty of the recorder to record the same in the miscellaneous records of such county; and from the time of the recording thereof, as aforesaid, the said association and their successors shall be deemed and held a corporation, and shall have, possess, and enjoy all the rights, powers, and privileges given to cor-

porations by common law; to sue and be sued; to borrow money and secure the payment of the same by notes and mortgages, bonds, or deeds of trust, upon the person or real estate of such association; to purchase, rent, lease, hold, sell, and convey real estate for the benefit of such corporation; and to erect and maintain suitable buildings for the purposes aforesaid and for other objects properly connected therewith. Such corporation shall, also, have the right and power to receive and accept donations, either of money or real estate, either by gift or devise, and to hold, use, enjoy, mortgage, sell, and convey the same, for the benefit of such corporation, in the manner provided in the deed of gift or devise by which the same was received. And the real estate and personal property of any such corporation which shall have established a public library for the purposes aforesaid, and shall have put the same into operation, shall be exempt from taxation for state, county, and all municipal purposes, and shall remain exempt, as aforesaid, so long as the same is used exclusively for the general benefit of the inhabitants of the city or county in which such library may be located.

Sec. 3809. Gallery of art—Reading-room—Park. 4. Whenever any such corporation shall be established as in this act provided, it shall be lawful, and such corporation shall have the power, to establish and maintain, in connection with its library, a gallery of art and public reading-rooms, and may also maintain, either in connection with its library building or separate therefrom, a public park.

[1873, p. 176. Approved and in force March 8, 1873.]

Sec. 3810. Stock. 2. All stock in such library association shall be deemed personal estate, and shall be transferred in the manner and under the conditions prescribed by the by-laws of the same; and such stock shall be exempt from the levy of any state, county, township, or municipal tax, and shall not be liable to execution for the debts of the owners of the same.

Sec. 3811. Voting stock. 3. At all meetings of shareholders, each shareholder shall be entitled to one vote for each share of stock held by him; and provision shall be made by the by-laws by which absent shareholders may vote by proxy.

Sec. 3812. Museum. 4. Library associations may make such provisions as the board of directors may deem proper, for maintaining, in addition to the library, a reading-room and museum.

Sec. 3813. Fines—Costs—Judgment without relief. 5. All fines and forfeitures accruing from the violation of the by-laws and regulations made by the directors shall be recoverable, with costs, in an action before any court of competent jurisdiction; and judgments for the same shall be collected without relief from valuation or appraisement laws.

Sec. 3814. Corporations may take stock. 6. Any mining or manufacturing company or other voluntary association within the State shall have the power to subscribe to and purchase stock in such library associations; and the provisions of all laws inconsistent with this section are hereby repealed.

Sec. 3815. Cities may take stock. 7. Any city incorporated under the laws of this State may, by the vote of two-thirds of the members of the common council thereof, subscribe to the stock of any public library association organized within its limits; and for the payment of such shares of stock, and the assessments on the same, may, from time to time, as the common council may think proper, annually levy and collect not more than two mills on the dollar upon the taxable property within the limits of the city; which shall be paid into the city treasury, and applied to the payment of such stock and assessments made thereon.

CHAPTER XXXVIII.

RAILROADS.

ART.
3. *Franchises*

ART.
5. *Public Aid.*

ARTICLE 3—FRANCHISES.

SEC.
4020. Signals at crossings.
4021. Penalty for failure.
4022. Suits for.

SEC
4023. Damages.
4024. Penalty for school fund.

[1881 S., p. 590. Approved April 8, 1881, and in force September 19, 1881.]

SEC. 4020. Signals at crossings. 1. It shall be the duty of all railroad companies operating in this State to have attached to each and every locomotive engine a whistle and a bell, such as are now in use or may be hereafter used by all well-managed railroad companies; and the engineer or other person in charge of or operating such engine upon the line of any such railroad shall, when such engine approaches the crossing of any turnpike or other public highway in this State, and when such engine is not less than eighty nor more than one hundred rods from such crossing, sound the whistle on such engine distinctly three times and ring the bell attached to such engine continuously from the time of sounding such whistle until such engine shall have fully passed such crossing: *Provided*, That nothing herein shall be so construed as to interfere with any ordinance that has been or may hereafter be passed by any city or incorporated town in this State regulating the management or running of such engines or railroads within the limits of such city or incorporated town: *Provided, further*, That all penalties incurred under the act of March 29, 1879, are hereby repealed.

1. This section is constitutional, 67 Ind. 45.

2. The failure to give signals at a public crossing of the approach of a train is negligence *per se*, and fixes the liability of the railroad company to one who, without concurring negligence, is injured thereby, 103 Ind. 31, 27; 99 Ind. 486; 82 Ind. 435; 44 Ind. 76. The injured person, to recover, must show that he himself was free from negligence, 117 Ind. 56. To run a train so close behind another train as to make the statutory signals unavailing as a means of warning travelers is such negligence, if any one, without concurring negligence, is thereby injured, as renders the railroad company liable for its negligence, 101 Ind. 522; 120 Ind. 289, 367. The presumption is that both signals were given, 120 Ind. 367.

[1879, p. 173. Approved March 29, 1879, and in force May 31, 1879.]

SEC. 4021. Penalty for failure. 2. Every engineer or other person in charge of or operating any such engine, who shall fail or neglect to comply with the provisions of the preceding section, shall be held personally liable therefor to the State of Indiana, in a penalty of not less than ten dollars nor more than fifty dollars, to be recovered in a civil action, at the suit of said State, in the circuit or superior court of any county wherein such crossing may be located; and the company in whose employ such engineer or person may be, as well as the person himself, shall be liable in damages to any person or his representatives who may be injured in property or person, or to any corporation that may be injured in property, by the neglect or failure of such engineer or other person as aforesaid.

SEC. 4022. Suits for. 3. All actions for the recovery of the penalties prescribed in the preceding section shall be prosecuted in the name of the State of Indiana, by the prosecuting attorney of any county where such failure or neglect, as aforesaid, may occur; and such prosecuting attorney shall be entitled to recover and receive for his services in such cases, as a docket-fee, twenty dollars in each case, to be taxed as part of the costs in such cases.

SEC. 4023. Damages. 4. The amount of damages which may be recovered under the provisions of this act, whether for bodily injuries or death, shall be within the discretion of the court or jury trying the cause: *Provided*, That in case of death such damages shall not exceed the sum of five thousand dollars.

SEC. 4024. Penalty to school-fund. 5. All fines and penalties collected under the provisions of this act shall be appropriated to the benefit of the common-school-fund of the State; and the clerk of the court wherein such fines and penalties may be assessed and recovered shall, upon receipt thereof, pay the same over to the treasurer of said county, for the purpose aforesaid.

ARTICLE 5—PUBLIC AID.

SEC.		SEC.	
4088.	Petition to city.	4091.	Interest—Sinking fund.
4089.	Duty of council.	4092.	Payment of aid.
4090.	Bonds.	4093.	Election expenses.

[1872, p. 49. Approved and in force December 14, 1872.]

SEC. 4088. Petition to city. 12. Whenever a petition shall be presented to the city council of any city incorporated under the general laws of this State, and situate in any county bordering on the state line, or any river forming the state boundary, signed by a majority of the resident freeholders of such city, asking said council to make an appropriation of money (stating the amount),

to aid a railroad company therein named, and coming under the provisions of the first section of this act [R. S. 1881, § 4077], by subscribing to the capital-stock of such company, to aid in constructing a railroad from an adjoining state to such city, or to the state line, or to a river forming the state boundary bordering the county in which such city is situated, or to connect with any other railroad in said city or near the corporate limits of such city, it shall be the duty of such council, after being satisfied that such petition has been properly signed by the requisite number of resident freeholders of such city, to cause the same to be entered at full length upon its records.

For aid by cities generally to railroad companies, see § 3152, *and notes*.

Petition.

To the Common Council of the City of ———:

The undersigned, a majority of all the resident freeholders of said city of ———, State of Indiana, respectfully pray that you will subscribe in behalf of said city to the capital stock of the ——— railroad company, in the corporate name of said city, the following amount, to wit: ——— dollars, for the purpose of aiding said company in constructing a railroad from the city of ———, in the State of ———, to said city of ———, [*or*, to a point in the line of said State immediately opposite said city of ——— ; *or*, to a point on the ——— bank of ——— river immediately opposite said town of ———].

[Signed.] _____

Sec. 4089. Duty of council. 13. Such city council shall take said petition under advisement, and, thereupon, make an order directing the mayor of such city to subscribe to the capital-stock of such railroad company, in the proper corporate name of such city, the amount specified in such petition for the purposes aforesaid; which subscription shall be made upon and subject to such provisions and conditions as a majority of such city council and mayor may deem necessary to protect the best interests of such city.

Journal Entry.

Whereas, A. B. and others, freeholders of this said city of ———, of the State of Indiana, have signed and presented the following petition to this council, to wit: [*Set it out at length with the names*]; and

Whereas, those who signed said petition are a majority of all the resident freeholders of said city; therefore

It is ordered and directed by this common council of said city that the mayor thereof subscribe to the capital-stock of said railroad company, in the corporate name of said city, the amount specified in said petition, to wit: ——— dollars.

Sec. 4090. Bonds. 14. It shall be the duty of such city council to issue the bonds of such city (as provided for in section five of this act—§ 4081), to an amount sufficient to liquidate said subscription to the capital stock of such railroad company aforesaid, and to pay the same, or the proceeds thereof, in such liquidation,

from time to time, as the work upon such railroad progresses or the conditions of such subscription to the capital-stock thereof require.

Sec. 4091. Interest—Sinking-fund. 15. Such city council shall provide for the payment of the annual interest of such bonds, and also provide a sinking-fund for the payment of the principal thereof at maturity, by levying a special tax therefor upon the real and personal property in such city subject to taxation for state, county, and municipal purposes; which tax shall be placed upon the tax-duplicate of such city, and collected as other taxes are collected for city purposes.

Sec. 4092. Payment of aid. 16. After the money authorized by this act to be subscribed and appropriated shall have been levied and collected, or city bonds issued as aforesaid, the railroad company for whose aid the same shall have been so levied and collected, or city bonds so issued, having fully done, performed, and complied with all the provisions and conditions upon which such subscriptions were made and connected therewith in good faith, shall be entitled to demand and have a full compliance with the terms of such subscriptions upon the part of such counties, townships, or cities, as the case may be, to the full intent and meaning of this act; and such railroad company, or any one of said petitioners, or any tax-payer of such county, township, or city, as the case may be, may compel the same to be done by mandate against such county, township, or city.

Sec. 4093. Election expenses. 17. The officers conducting the elections provided for in this act shall be allowed the same pay as is allowed for like services in general elections. Should the election result in favor of a railroad appropriation, the expenses of the election, after being paid by the county, township, or city, as the case may be, shall be charged against the railroad company benefited, and deducted out of the first moneys collected by virtue of the appropriation.

CHAPTER XLI.

CORPORATIONS—STREET RAILWAY COMPANIES.

ART.

1. *In Cities and Towns.*
2. *Extension beyond City or Town.*
3. *General Provisions.*

ARTICLE 1—IN CITIES AND TOWNS.

SEC.

4143. How formed.
4144. When incorporated.
4145. Powers.
4146. Evidence of incorporation.
4147. Construction of track.
4148. Power to borrow money.
4149. Directors and officers.
4150. Annual meeting—Election.
4151. By-laws.
4152. Stock transferable.
4153. Amendment or repeal.
4154. Consent of common council.

[1861 S., p. 75. Approved June 4, 1861, and in force September 7, 1861.]

SEC. 4143. How formed. 1. Any number of persons, not less than five, being subscribers to the stock of any contemplated street or horse railroad company may be formed into a corporation for the purpose of constructing, owning, and maintaining street or horse railroads, switches, or side-tracks upon and through the streets of the cities or towns within this State, by complying with the following requirements: Whenever stock to the amount of at least ten thousand dollars shall have been subscribed, the subscribers to such stock shall elect directors for such company from their own number, and shall severally subscribe articles of association, in which shall be set forth the name of the corporation, the amount of capital-stock of the company, the number of shares of which said stock shall consist, the number of directors, the names to manage the affairs of the company, and the city or town in which it is proposed to construct such road.

SEC. 4144. When incorporated. 2. The articles of association formed in pursuance of the provisions of the preceding section shall be filed in the office of the secretary of state; and, thereupon, the persons who have subscribed the same, and all persons who shall become stockholders in said company, and their successors, shall be a body politic and corporate in perpetuity, by the name stated in the articles of association, and shall be capable of suing and being sued, and may have a common seal, the same to alter at pleasure.

Sec. 4145. Powers. 3. The said company shall be capable of purchasing, holding, and conveying any real or personal property whatever, necessary for the construction and equipment of the road, switches, and side-tracks, and for the erection of all necessary buildings and yards; and may buy, own, and sell any kind of property that may be necessary to properly conduct or carry on the business of such road.

Sec. 4146. Evidence of incorporation. 4. A copy of any articles of association filed in pursuance of this act, and certified to be a correct copy by the secretary of state or his deputy, shall, in all courts or places, be evidence of the incorporation of such company and of the facts therein stated.

[1891, p. 109. Became a law by lapse of time, without the Governor's signature, March 5, 1891.]

Sec. 4147. Construction of track. 5. Such company may construct its track, switches, side-tracks, or turn-outs upon the streets of said cities or towns under the following conditions and restrictions: The said track shall be constructed upon the center or side of said streets, and shall conform exactly to the established grade of such street. The free passage of the streets of such city or town, occupied or used by said company, shall be impeded or obstructed by such company only to the extent necessary for the purposes for which said company was organized. The points where such track shall intersect and cross the streets of such city or town shall be so arranged by said company as to render the crossing as passable and in as good condition as any other portion of the street. The track shall be from four to five feet in width. Every company organized under the provisions of this act, and owning and operating a street railroad within any city having a population of one hundred thousand and upwards according to the last preceding United States census, shall permit the use of its track or tracks by any incorporated suburban passenger railway company from the corporate limits of such city or town to some central point in such city or town, for the purpose of receiving and discharging passengers, whenever the common council and board of aldermen, or the common council or board of trustees of any such city or town shall, by ordinance, fix such central point and grant a right of way thereto to such suburban passenger railway company upon or over any street, alley, road-bridge or public highway of such city or town, now or then occupied in whole or in part by any street railway company with one or more tracks: *Provided*, That such use shall be upon such conditions as the common council and board of aldermen, or the common council or board of trustees of such city or town may prescribe, and upon such terms as to compensation as such companies may mutually agree. And in case such companies can not agree as to such compensation within thirty days from the passage of such ordinance, then such

use shall be permitted upon such terms as to compensation as may be fixed and determined by an action instituted by either of such companies in the circuit court of the county in which such city or town may be situate. And no appeal shall operate to stay the use of such track or tracks, as fixed and determined in said action: *And provided further,* That the provisions of this act shall not apply to any suburban passenger railway company whose line extends more than ten miles beyond the corporate limits of such city or town.

1. A street railway does not change its character by reason of the fact that the cars are propelled by a cable and grip, or by electricity, instead of horses, 16 Bull. 355; 22 Bull. 67; and the fact that the cable is run by steam does not make it a steam railway, 17 Bull. 265. Where the corporation reserves in its grant the right to allow the use of tracks to other companies, it may grant this right on such terms as it may fix, and it is no objection thereto that the first company will thereby lose business, 10 Bull. 72. Council may grant right of way through a park, and reserve a rental therefor, 3 Bull. 551; and a private owner, over whose property a route has been established, may, by active participation in establishing the route and bidding for the right to construct the road, be estopped to deny that his property is dedicated for the purpose, 17 Bull. 265. A street railway company chartered in another State can not acquire the right to run cars in Ohio by simply agreeing with a company authorized so to do that it may use its tracks, 2 Bull. 17. Council may lawfully establish two routes for the same road and allow grantee to choose either, 8 Rec. 612.

2. Discretion of council to grant extensions of existing roads will not be controlled, 37 O. S. 556; they may be in any streets the council deems beneficial, and in any direction, 8 Rec. 612; and may be over the tracks of other companies, with proper consent, 37 O. S. 556.

3. City or town authorities can not grant to a company the exclusive privilege of occupying all the streets of the city or town. But one company can not insist, under a grant from the city or town, on laying its track in a street occupied by another company under an older grant, 127 Ind. 369; S. C. 24 N. E. Rep. 10, 54; 26 N. E. Rep. 893.

[1861 S., p. 75. Approved June 4, 1861, and in force September 7, 1861.]

SEC. 4148. Power to borrow money. 6. Such company may, from time to time, borrow such sums of money as may be necessary for completing or operating its railroad; may issue and dispose of its bonds for any amount so borrowed, for such sums and for such rate of interest as is allowed by the laws of the State where the contract is made; and may mortgage its corporate property and franchises to secure any debt contracted by such company.

SEC. 4149. Directors and officers. 7. The said subscribers to the stock of such contemplated road shall, as soon as the number named in the first section [§ 4143] shall have signed the same, proceed to the election of directors, who shall serve for the term of one year. The said directors shall elect the following officers, to wit: President, vice-president, secretary, and treasurer; whose term of office shall be for one year and until their successors are elected and qualified.

Sec. 4150. Annual meeting—Election. 8. There shall be an annual meeting of the stockholders held at the office of such company, for the election of directors to serve for the ensuing year. Not less than three nor more than seven directors shall be chosen at such meeting of such stockholders, by ballot, and by a majority of the stockholders present in person and by proxy; and every such stockholder being so present shall be entitled to give one vote for every share of stock owned by him. No person shall be a director unless he shall be a stockholder, owning stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen.

Sec. 4151. By-laws. 9. The directors of such company shall have power to make by-laws for the management and disposition of stock, property, and business affairs of such company not inconsistent with the laws of this State; to prescribe the duties of officers, artificers, and servants that may be employed; for the appointment of all officers for carrying on all business within the objects and purposes of such company; and for regulating the running-time, fare, etc., of said road or roads.

Sec. 4152. Stock transferable. 10. The stock of such company shall be transferable in the manner prescribed by the by-laws of the company, and shall be considered personal property.

Sec. 4153. Amendment or repeal. 11. This act may be amended or repealed at the discretion of the legislature.

The legislature may authorize the laying of street railway track in a street, and it will not be such an additional burden on the easement as to entitle the adjoining lot-owner to damages. This act applies to Evansville, acting under a special charter, 78 Ind. 261. But if a city or town permit tracks to be maintained in a negligent condition, it may be liable to any one thereby personally injured, 122 Ind. 39.

Sec. 4154. Consent of common council. 12. Nothing in this act contained shall be so construed as to take away from the common councils of incorporated cities the exclusive powers now exercised over the streets, highways, alleys, and bridges within the corporate limits of such cities; and all street-railroad companies which may be organized under the provisions of this act shall first obtain the consent of such common council to the location, survey, and construction of any street-railroad through or across the public streets of any city before the construction of the same shall be commenced.

Ordinance Contract for Street Railway.

———, Ind., 18—.

This agreement, made and entered into this ——— day of ———, 18—, by and between the city of ———, of the county of ———, and State of Indiana, party of the first part, and the ———, a corporation duly organized under the laws of the State of Indiana, of the county of ———, and State of Indiana, party

of the second part, Witnesseth: That the said party of the first part, through the common council, does hereby authorize and empower the said party of the second part, its successors and assigns, and by the terms of this contract consent, permission, and authority are by said city hereby given, granted, and vested unto said party of the second part, the right to lay a single or double track for an electric street-railway line, with all proper and convenient turnouts, switches, and side-tracks in, along, and upon the following streets and alleys of the city of ———, State of Indiana, and to use, maintain, and operate the same for and in consideration of, and subject to, the terms, conditions, and limitations hereinafter prescribed, namely:

The right of way, course, and direction of the tracks of the said party of the second part shall be as follows: Beginning on [*describe course*].

The right of said party of the second part to use the said ——— street, from ——— street to ——— street, shall be confined to the construction of a single track, with all convenient sidings and turnouts. The said single line of tracks may be operated by the construction of the overhead system, the wire for which will be supported on wires at right angles to the center line of the street and supported by poles planted in and along the curb line of said streets above named.

The said party of the second part shall have the right to use a double track on the following streets: ———. The right to use the overhead system on the streets last above named, where the double track is to be laid, shall be constructed from a wire suspended on the cross arms of poles planted in the center of the streets and between the rails of the double tracks.

In consideration of the above grant to the said party of the second part and its successors the said party of the second part fully agrees and binds itself, its successors and assigns, to the following terms and conditions, namely:

That the said party of the second part shall pay to the treasurer of the city of ———, quarterly, the sum of one-fourth of one cent for each and every passenger carried on its cars.

That the said party of the second part will put registers in every car and register thereon the fare of each individual as the fare is collected; keep an accurate statement showing date, number of the car, and number of trips, and amount or number of fares collected on each trip on each car; prepare a monthly statement of the same and exhibit to said treasurer such books, statements, and documents or papers whereby he may ascertain the amount due such city. The said payment to be made on the ——— day of ——— of each year during the existence of this grant, which shall begin on the ——— day of ———, 18—, and end on the ——— day of ———, 19—.

That the party of the second part shall use only such motors, cars, and equipments as are strictly first-class, and maintain the same in good condition, and provide for conductors and motor-men for all cars, keep the cars well painted and clean on the outside; provide for the heating and lighting of the same by electricity, or fuel, or other means acceptable at all times to the common council; provide all cars with the most improved wire life-guards, and maintain all such property in good and safe condition, all of which shall be subject to the approval of said common council.

The said party of the second part shall pay for the paving between all rails and for a distance of eighteen inches on the outside of the outside rails with the same material as is used on the street on which its tracks are laid. That when any street on which the said party of the second part operates its cars is ordered to be improved by said common council, the party of the second part shall be assessed for so much of said street improvement as is included between its tracks and for eighteen inches on the outside of the outer rails of said track or tracks, side-tracks and switches, and that it will promptly pay such assessment or assessments. The distance between the inside rails of double tracks shall not exceed six feet.

Said party of the second part shall keep the space between the rails of each track, side-track, and switch, and for eighteen inches on the outside of the outside rail of each track, side-track, and switch, in good condition and repair, renewing the same from time to time whenever, in the judgment of said common council, it becomes necessary.

Said party of the second part shall not charge more than five cents fare for each passenger between its termini, or any fractional part thereof.

The poles shall be of iron or steel, and in form and shape acceptable to the common council.

All rails used on such tracks shall be of the "V" shape section, or such other section as shall be acceptable to such board. No rail shall be allowed that will, in any manner, interfere with the free and safe passage of vehicles.

All cars shall be run from the terminus in the city of ——— to the terminus in ———.

In and along the streets of the city of ——— the speed shall not exceed ten miles per hour, provided that at all crossings of the streets the speed shall be reduced to six miles per hour.

All cars shall stop at the farther crossings for receiving and discharging passengers.

All rules for the operation of cars within the limits of the city of ——— shall be approved by the common council before the same shall be or become operative.

The said party of the first part shall not be held liable, independently of or jointly with the said party of the second part for any accidents that may occur through the operation of the road or cars of said party of the second part, whereby any injury or damage shall result to persons or property, and said party of the second part hereby agrees to pay any judgment, with costs, which may be taken against the party of the first part either alone or jointly with the said party of the second part, on account of any such injury or damage.

At any time after the ——— day of ———, 18—, during the period of this grant, the common council may require the said party of the second part to use the storage battery or any other approved system, upon six months' notice having been given, and upon the failure of the said party of the second part to comply with the provisions of such notice, the common council may require or cause to be removed, all wires, poles, and tracks belonging to said party of the second part within or upon any street or alley of the city of ———, without, in any manner, being a trespasser upon the rights or property of said party of the second part, or becoming liable to them in damages for removing or causing to be removed such wires, poles and tracks, or either of them.

Any improvement undertaken by, or in the name of, the said party of the first part, or by any contractor for said first party, for the improvement of any street, alley, sidewalk, or crossing, or the construction of any sewer or drain, shall not be impeded by said party of the second part, its agents or employes, but said party shall do all in its power to advance such improvement by protecting its tracks and poles, removing and relaying the same when it becomes necessary, at its own cost. The said party of the first part shall protect the said party of the second part as much as possible by seeing that the contractor for any work for it does not intentionally delay the same, to the detriment of the said party of the second part.

Should it be necessary in the prosecution of any public work to stop entirely the operations of the road, it may be done by order of the common council, and in which case the said party of the first part shall be held free from all claims for damages by reason of such delay to the business or traffic of said party of the second part

In times of danger from fire or other causes, the chief engineer of the fire department or any member of the common council, may order any wire or wires belonging to said party of the second part cut, and the electric current stopped until such danger is passed. The cars of said party of the second part shall not at any time be allowed to run over any hose belonging to the fire force of said party of the first part.

All specifications for the construction of said electric street railway within the limits of the said city of ———, shall first be approved by the said common council before the construction of said street railway shall be begun

Should said party of the second part at any time sell its property and rights herein granted to any other company operating other lines in the city of ———, or should said party of the second part, by and through any further grants hereafter made to it by said party of the first part, make any extensions, within said city, of such nature as to render a transfer of its passengers between such lines, within the judgment of said common council, desirable, then said company, its successors, or assigns, may be allowed to charge one cent additional

fare for each transfer. Whether said increase in fare be made or not, the said second party, its successors or assigns, shall furnish passengers, so desiring it, a transfer ticket, which shall be good for passage on any line or lines belonging to it during the day of its issuance. Such ticket shall be transferable and said party of the second part shall furnish the same transfer privileges from any line or lines it may operate to ——— and all intervening points.

The rights and privileges herein granted shall not be operative until the said party of the second part shall have fully constructed and equipped their road from ——— to the corporation line of the city of ———, and until a car propelled by electricity shall have passed over the entire distance between said corporation line and ———, which shall not be later than the ——— day of ———, 18—, which time may be extended in writing by said common council, if, in their opinion, it is deemed proper and advisable to do so.

Said party of the second part shall file a bond in the sum of $25,000, to be approved by the said common council, payable to the city of ———, conditioned upon the faithful performance by said party of the second part, their successors or assigns, at all times, of all the requirements of this contract, and which bond shall be renewed or increased to a sum not exceeding the sum of $50,000, whenever said common council shall so require.

Said road and the cars belonging to said party of the second part shall at all times be conducted in conformity with all existing laws and ordinances of the city of ———.

In case the party of the second part, its successors or assigns, shall violate any of the terms, conditions or obligations herein contained, then and in that event all the rights and privileges herein granted shall be immediately forfeited and revert back to the said party of the first part, and this contract, in all things, shall be and become null and void, and the said party of the first part shall have the right to remove, or cause to be removed from the streets herein named, all poles, wires, tracks, side-tracks and switches, and all other property whatsoever belonging to said party of the second part, its successors or assigns, and a right of action for a breach of contract shall immediately accrue upon the bond of the said party of the second part for any injury or damage arising out of said breach of contract upon the part of said party of the second part, its successors or assigns.

To each of the terms, conditions, stipulations and requirements of this contract, the said common council, representing the city of ———, the party of the first part herein, and ———, president, and ———, secretary, representing the ——— and ———, the party of the second part herein, fully agree and bind themselves, their successors and assigns.

ARTICLE 2—EXTENSION BEYOND CITY OR TOWN.

SEC.

4155. Consent of county board.
4156. Consent of gravel-road company.
4157. Protection and regulation.
4158. Track on highway—Agreement—Proviso.

SEC.

4158*a*. Electricity.
4158*b*. Loan—Mortgage.
4158*c*. Title to property sold.
4158*d*. Conditional sale.
4158*e*. Acknowledgment and recording.

[1879 S., p. 175. Approved and in force March 29, 1879.]

SEC. 4155. Consent of county board. 1. Any street or horse-car railway company organized under the laws of the State of Indiana, and operating such railway within any of the incorporated towns or cities of this State, and desiring to extend its road beyond such town or city limits on any state or county road or other public highway; or any other company organized under the laws of the State of Indiana, for similar purposes; or any person or persons desiring to build a horse or street-railway outside of any city, on any public highway,—may do so, after procuring the consent of the board of county commissioners of such county.

Sec. 4156. Consent of gravel-road company. 2. If such road or highway be graveled or planked by a gravel or plank-road company, such street or horse-car railway company shall also be required to procure the consent of such gravel or plank-road company, to run its road over such gravel or plank road; which consent, when given, shall not be revoked by such gravel or plank-road company.

[1865, p. 63. Approved and in force March 6, 1865.]

Sec. 4157. Protection and regulation. 3. Such street or horse-car railway company operating such road outside of such town or city limits shall have the same protection, and, in its running, be governed by the same regulations prescribed for it within such town or city.

[1879 S., p. 175. Approved and in force March 29, 1879.]

Sec. 4158. Track on highway—Agreement—Proviso. 4. Such street or horse-car railway company shall, in all cases in which any road or highway shall be used by it for the purposes expressed in this act, locate its tracks on such part of such highway, as may be agreed upon between the parties making such application for the use of such highway and the board of county commissioners of the county: *Provided*, That nothing in this act shall interfere with any vested right heretofore acquired by any street-railway company organized under the laws of the State of Indiana.

[1891, p. 68. Approved and in force March 3, 1891.]

Sec. 4158*a*. Use of electricity. 1. Any street or horse railroad heretofore or hereafter organized in this State, may, with the consent of the common council of the city in which such railroad or any part thereof is located and operated, and with the consent of the board of commissioners of the county where such railroad or any part thereof is operated beyond the limits of such city, use electricity for motive power: *Provided*, That nothing in this act contained shall be so construed as to take away from the common councils of incorporated cities the exclusive powers now exercised over the streets, highways, alleys and bridges within the corporate limits of such cities, and all such street railroad companies shall first obtain the consent of such common council for the operation by electricity of their cars along, through or across the public streets or alleys of any city before the operation by electricity of their cars shall be commenced: *Provided*, That in giving such consent such common council or board of county commissioners may do so upon such terms and conditions as they may see fit to impose.

Sec. 4158*b*. Loan—Mortgage. 2. Any such company may, from time to time, borrow money for completing, operating or equipping its railroad; may issue and dispose of its bonds for any amount so borrowed, and may mortgage its corporate property and franchises to secure such bonds or any contract by such company.

Sec. 4158*c*. Title to property sold. 3. That in any written contract of, or for the sale of electrical equipment for such street railroad, by the terms of which the purchase-money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold, shall not pass to or vest in the vendee, until the purchase-money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase-money, notwithstanding delivery thereof to and possession by the vendee.

Sec. 4158*d*. Conditional sale. 4. In any written contract for the leasing or renting of such electrical equipment it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rental received may, as paid or when paid in full, be applied and treated as purchase-money, and that the title to such property shall not vest in such lessee or vendee until the purchase-money shall have been paid in full, notwithstanding delivery to and possession by such lessee or vendee.

Sec. 4158*e*. Acknowledgment and recording. 5. Every such contract specified in sections three and four shall be good, valid and effectual, both in law and equity, against all purchasers and creditors: *Provided, First,* The same shall be acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds; *Second.* Such instrument shall be recorded in thirty days after such execution, in the miscellaneous record in the office of the recorder of the county in which such street railroad is located and operated.

ARTICLE 3—GENERAL PROVISIONS.

SEC.
4159. Assessment—Limit—Proviso
4160. Preferred stock.
4161. Individual liability.
4161*a*. Extension of franchise forbidden.
4161*b*. Changing contracts.
4161*c*. Term of franchise limited.
4161*d*. Laws repealed.

[1867, p. 162. Approved and in force February 28, 1867.]

Sec. 4159. Assessment—Limit—Proviso. 1. For the purpose of raising funds to pay any existing debts or liabilities of any street-railway company, due or to become due, the board of directors of such company, with the approval of the stockholders owning a majority of the stock, may make a *pro rata* assessment against the stockholders, the aggregate of which shall not be greater than a sum equal to one-third the amount of stock; and may make all needful rules and regulations in relation thereto, including provisions for the forfeiture, sale, and cancellation of the stock of any stockholder who shall fail to pay his *pro rata* assessment within thirty days after personal demand or notice given requiring such payment: *Provided,* That written or printed notice of said assessment shall be served on the stockholder in person, or presented at his or her usual or last place of residence, thirty

days before the same is payable; and the certificate of any notary-public, attested by his official seal, shall be sufficient evidence of the service of said notice, or of its presentation at the residence of the stockholder, either within or without this State.

SEC. 4160. Preferred stock. 2. For the purpose of providing means for the payment of its debts, for the construction of its roads, or for materials or equipments, such company may issue preferred stock to an amount not exceeding one-half the amount of its capital, with such priority over the remaining stock of such company, in the payment of dividends, as the directors of such company may determine and shall be approved by the stockholders owning a majority of such stock.

SEC. 4161. Individual liability. 3. Stockholders in such company shall be individually responsible for such company's liabilities or debts hereafter created, in the same manner, and to the same extent, and no greater, than stockholders in other railroad companies are individually liable under the general laws of this State.

[1891, p. 481. Became a law by lapse of time, without the Governor's signature, March 10, 1891.]

SEC. 4161*a*. Extension of franchise forbidden. 1. In all cities of fifty thousand and less than one hundred thousand inhabitants, according to the United States census of 1890, in the said State of Indiana, city councils and all other city authorities are prohibited from extending the franchise or franchises of street railway companies, or any other franchise of any other corporation covering the use of the streets and alleys of said cities, or from changing, altering, or in any way amending such franchise or franchises during the term for which they were originally granted by the city councils, or other authorities.

This statute only applies to the city of Evansville.

SEC. 4161*b*. Changing contracts. 2. City councils and all other city authorities in cities of fifty thousand, and less than one hundred thousand population, according to the United States census of 1890, are also prohibited from extending, changing, altering or amending any contract or contracts made with any individual or corporation to serve the public with gas, electric lights, steam heating or any and all other conveniences and necessaries, whose service requires the use of the city's streets and alleys during the term for which said contract was originally made and entered into.

SEC. 4161*c*. Term of franchise limited. 3. Cities of fifty thousand and less than one hundred thousand population, according to the United States census of 1890, shall not grant a franchise to any corporation or person or persons for any purpose for a period to exceed twenty-five (25) years from the date of such grant, nor for a less consideration than two per cent. per annum of the gross receipts of the business for which said franchise is used.

SEC. 4161*d*. Laws repealed. 4. All laws and parts of laws in conflict herewith are hereby repealed.

CHAPTER XLV.

WATER-WORKS COMPANIES.

SEC.

4200. How purchasers may incorporate.
4201. Franchises—Old stockholders.
4202. Power to borrow money.
4203. Sinking-fund — Preferred stock — Bondholders' vote.

[1881, p. 60. Approved and in force February 4, 1881.]

SEC. 4200. How purchasers may incorporate. 1. In case of the sale of any water-works property within the State, by the judgment and decree of any court of competent jurisdiction within this State, the purchaser or purchasers thereof, the survivor or survivors, or associates or assigns, may form a corporation, by filing in the office of the secretary of state a certificate specifying the name and style of the corporation; the number of directors, the names of the first directors, and the period of their services, not exceeding one year; the amount of its capital-stock, and the number of shares into which said capital is to be divided; and the city in and near which said corporation proposes to operate. The persons signing said certificate, and their successors, shall be a body corporate and politic, by the name in said certificate specified, with power to sue and be sued, to contract and be contracted with, and to maintain and operate the water-works in said certificate named, and transact all business connected with the same. A copy of such certificate, attested by the signature of the secretary of state or his deputy, shall, in all courts and places, be evidence of the due organization and existence of the said corporation and the matters in said certificate stated.

SEC. 4201. Franchises—Old stockholders. 2. Such corporation shall possess all the powers, rights, privileges, immunities, and franchises in respect to the said water-works property, so purchased as aforesaid, and future acquisitions, and all of the real estate and personal property, choses in action, and contracts appertaining to the same, which were possessed or enjoyed by the corporation that owned or held said water-works property, previous to such sale, by virtue of the law of its organization; and shall have no other powers, privileges, or franchises. Such powers,

privileges, and franchises shall be subject to the restrictions, limitations, and power of supervisory control contained in the laws under which such original organization was formed (namely, the act approved March 6, 1865). It shall have power, at any time after the formation of the corporation, as aforesaid, to assume any debts and liabilities of the former corporation, and to make such adjustment and settlement with any stockholder or stockholders, creditor or creditors of such former corporation as may be deemed expedient; and, for such purpose, to use such portions of the bonds and stocks of said corporation as may be deemed advisable, and in such manner as said corporation may deem proper: *Provided*, That all subscribers to the original stock of said water-works company, their heirs, executors, and administrators, by the acceptance or adoption of this act by any purchaser or purchasers of any such water-works, as above provided, shall be released and discharged from all their unpaid subscriptions which shall not have been previously settled or arranged by agreement or compromise: *And provided, further*, That all holders of any such capital-stock which shall have been paid up, and all creditors of any such water-works company, shall have the right to accept and avail themselves of any trusts, agreements, and provisions for re-capitalization, for and during the period of six months from and after such sale.

Sec. 4202. Power to borrow money. 3. Said corporation shall have power to make and issue bonds bearing such rates of interest, not exceeding six per cent. per annum, payable at such times and places and in such amount or amounts as it may deem expedient; to sell and dispose of said bonds at such prices, and in such manner as it may deem proper; and, to secure the payment of any bonds which it may make, issue, or assume to pay, by mortgage or mortgages, deed or deeds of trust, of its water-works, or any part thereof. Its real and personal property and franchises and all property of said corporation included in such mortgage or mortgages, deed or deeds of trust, whether then held or thereafter acquired, shall be subject to the operation and lien of such mortgage or mortgages, deed or deeds of trust, and, in case of sale under the same, shall pass to and become vested in the purchaser or purchasers thereof, so as to enable them to form a corporation in the manner herein prescribed, and vest in such corporation all the faculties, powers, authorities, immunities, and franchises conferred by this act.

Sec. 4203. Sinking-fund—Preferred stock—Bondholders' vote. 4. And the said corporation shall have power to establish sinking-funds for the payment of its liabilities, and to issue capital stock to such aggregate amount as may be deemed necessary, not exceeding the amount named in the certificate of organization; may make perferred stock; may make and establish preference, in respect to dividends, in favor of one or more classes of stock over and above

other classes, and secure the same in such order and manner and to such extent as said corporation may deem expedient; and may confer upon the holders of any of the bonds which it may issue or assume to pay, the right to vote at all meetings of stockholders, not exceeding the number of votes such bondholder would be entitled to cast if he held the same amount, represented by his bonds, in the capital-stock of the company, if deemed expedient; which right to vote, when once fixed, shall attach to and pass with said bonds, under such regulations as said corporation may prescribe, but shall not subject the holder to any assessment made by said company or to any liability for its debts or entitle any holder thereof to dividends.

CHAPTER XLV*A*.

WATER-WORKS IN TOWNS.

SEC.

4203*a*. Powers and liabilities.
4203*b*. Right of way.
4203*c*. Proceedings to acquire.
4203*d*. Claimants.
4203*e*. Unknown owners.
4203*f*. New proceedings.
4203*g*. Interference with works.
4203*h*. Bonds—Borrowing money.
4203*i*. Consent of town.
4203*j*. Existing companies.

[1889, p. 195. Approved and in force March 6, 1889.]

SEC. 4203*a*. Powers and liabilities. 1. Whenever any company incorporated under the provisions of chapter 35, R. S., 1881, for the purpose of constructing and operating water-works in or for any incorporated town, shall have obtained and shall hold by franchise, ordinance or resolution from said town, the right and privilege of operating such water-works, and of laying necessary pipes, mains and conduits through the streets of said town, such corporation shall possess the powers and be subject to the liabilities and restrictions expressed in the following:

First. To cause such examinations and surveys as may be necessary to the selection of the most advantageous positions and locations for the source of supply, the pumping stations, the settling basins, the filtering basins or tanks, the storage reservoir, the supply mains, the delivery reservoir, tank or stand-pipes, and delivery mains, any or all of these, and the necessary lines of pipe connecting them; and for such purposes, by its officers, agents and servants to enter upon the lands and waters of any person, but subject to responsibility for all damages which they shall do thereto.

Second. To receive, hold and take such voluntary grants and donations of real estate, money and other personal property, as shall be made to it, to aid in the construction, operation and maintenance of such water-works; but the real estate thus received by voluntary grants shall be held and used for the purposes of such grants only.

Third. To purchase, and by voluntary grants and donations receive and take, and by its officers, agents and servants, enter

upon, take possession of, hold and use all such real estate, water rights and other property as may be necessary for the construction and operation of said water-works, and other accommodations necessary to accomplish such construction and operation; but not until the compensation to be made therefor as agreed upon by the parties or ascertained as herewith prescribed shall have been paid to the owner or owners thereof, or deposited as hereinafter directed, unless the consent of such owner be given to enter possession.

Fourth. To determine and lay out the site for, construct and use the pumping stations with necessary accommodations and roads thereto, the settling basins, the filtering basins or tanks, the storage reservoirs, the delivery reservoirs, tanks or stand pipes, and all the necessary accommodations thereto.

Fifth. To lay necessary mains, conduits and pipes under and across any parcel of land, water course, road, highway or railroad, which the route thereof shall intersect, in such manner, however, as to afford security for life and property and to cause no interference to traffic: *Provided*, That such parcel of land, water course, road, highway or railroad shall be restored to the same condition, as far as possible, as it was in at the time the excavations for said mains and pipes were commenced.

Sixth. To enter upon such lands under or across which the said mains, pipes and conduits are laid, and to re-excavate the same for the purpose of change or repair, but subject to responsibility for all damages which it shall do thereto.

Seventh. To use and distribute water from any lake or natural stream of water in the county in which said water-works are to be built, and by permission from the board of commissioners of said county, to lay out and construct a dam across the same, upon paying the assessed damages caused thereby to the owner or owners so damaged.

Eighth. To take up and change the route of the pipes, mains and conduits, to change the source of supply and remove the pumping stations, to vacate and reconstruct the various reservoirs, and to change the positions of the tanks, stand-pipes and other appurtenances belonging to said water-works company, whenever it shall be deemed necessary or advantageous to do so. [El. Sup. § 1130.]

The statute referred to in the above section can be found in the Revised Statutes of 1881 from § 3851 to § 3879, which defines the manner in which such companies may be formed.

Sec. 4203*b*. Right of way. 2. In case any corporation governed by this act is unable to agree for the purchase or lease of any real estate, right of way, easement and water privileges, and the use of water from any lake or natural stream of water, required for the construction and operation of such water-works and all the appendages thereto, then it shall be lawful for the said company to appropriate and acquire the title to the same in the manner and by the special proceedings prescribed in this act. [El. Sup. § 1131.]

Sec. 4203c. Proceedings to acquire right of way. 3. Such company shall forthwith deposit with the clerk of the circuit or other courts of record of the county in which such water-works is to be erected, a description of the rights and interests to be appropriated; and such lands, rights and interests shall belong to such company to use for the purpose specified, by making or tendering payment as hereinafter provided. The said company may, by its directors, purchase or lease of the owner any such lands, right of way, easements and water privileges, and the use of water from any lake or natural stream of water, as shall be found necessary for the building, maintaining and operating of such water-works; or in case the same is owned by a person insane or an infant, at a price to be agreed upon by the regularly constituted guardian of said insane person or infant, if the same shall be approved by the court in which the description aforesaid shall be filed; and on such agreement or approval, the owner or guardian, as the case may be, shall convey the premises or rights so purchased or leased in fee-simple or otherwise as the parties may agree, to such water-works company, and the deed or contract when made shall be deemed valid in law. If the said company shall not agree with the owner or owners of such lands, rights and easements (or with his guardian if the owner be incapable of contracting) touching the damages sustained by appropriation, such company shall deliver to such owner or guardian, if within the county, a copy of such instrument of appropriation. If the owner (or his guardian, in case such owner is incapable of contracting) be unknown or do not reside within the county, such company shall cause to be published in some newspaper of general circulation in the county, for the term of three weeks, an advertisement reciting the substance of such instrument of appropriation. Upon filing such act of appropriation and delivery of such copy or making such publication, the circuit court or other court of record in the county where the land or water lies, or any judge thereof in vacation, upon the application of either party, shall appoint by warrant, three disinterested freeholders of such county, to appraise the damages which the owners of the lands, water rights, easements, lakes, and natural streams of water, may sustain by such appropriation. Such appraisers shall be duly sworn; they shall consider the injury which such owner may sustain by reason of such appropriation, and shall forthwith return their assessment of damages to the clerk of such court, setting forth the value of the property taken or injury done to the property (which they shall assess to the owner or owners separately), to be by him filed and recorded, and thereupon such company shall tender or cause to be tendered the amount thus assessed to the party, his agents or heirs, in whose favor such damages are awarded, or shall pay the same in trust to the said clerk; and on making such payment or tender thereof, it shall be lawful for such company to hold the interests in such lands and waters

so appropriated. The cost of such award shall be paid by such company, and on notice by any party interested in said proceedings, the court may order payment thereof and enforce such payment by execution. The award of said appraisers may be reviewed by the circuit court or other court in which such proceedings may be had, on written exceptions filed by either party in the clerk's office, within ten days after the filing of such award, and the court shall make such order therein as right and justice may require, by ordering a new appraisement on good cause shown: *Provided*, That notwithstanding such appeal, such company may take possession of the property therein described for the purpose for which it was condemned, and the subsequent proceedings on the appeal shall only affect the amount of compensation to be allowed. If, prior to the assessment, the said company shall tender to such owner (or his guardian, if he be unable to contract), an amount equal to or greater than the award afterward made, exclusive of costs, the cost of arbitration shall be paid equally, by such company and such owner or guardian. [El. Sup. § 1132.]

Sec. 4203*d*. Claimants. 4. If there are adverse or conflicting claimants to the money, or any part of it, to be paid as compensation for the property taken, the court may direct the money to be paid into said court by said company, until it can determine who is entitled to the same and shall direct to whom the same shall be paid; and may at its discretion, order a reference to ascertain the facts on which said determination and order are to be made. [El. Sup. § 1133.]

Sec. 4203*e*. Unknown owners. 5. The court shall appoint some competent attorney to appear and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent. The court shall also have power, at any time, to amend any defect or informality in any of the special proceedings authorized by this act as may be necessary, or to cause new parties to be added, and to direct such further notice to be given to any party in interest, as it deems proper; and also to appoint other appraisers in the place of any who shall die, or refuse, or neglect, or are unable to serve, or who may leave, or be absent from the State. [El. Sup. § 1134.]

Sec. 4203*f*. New proceedings. 6. At any time after an attempt to acquire title or right by appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew, to acquire or perfect the same in the same manner as if no appraisal had been made. At any stage of such new proceedings, the court may authorize the corporation, if in possession, to continue in possession, and, if not in possession, to take possession of, and any such real estate,

water, right of way and easements during the pendency and until the final conclusion of such new proceedings; and may stay all actions and proceedings against the company or any officer, agent or workman of such company, on account thereof, on such company paying into court a sufficient sum (as the court may direct) to pay the compensation therefor when finally ascertained; and in every such case the party interested in such property may conduct the proceedings to a conclusion, if the company delay or omit to prosecute the same. [El. Sup. § 1135.]

Sec. 4203*g*. Interference with works. 7. Nothing in this act shall be construed to grant the power to any water-works company to interfere with any pipes, drains or ditches used for drainage purposes without the consent of the owner thereof, or of the board of commissioners of the proper county when such drains or ditches are at the disposal of said board of commissioners, neither shall any artificial provision made for water by any person or corporation, or owned by any person, association or body be used, condemned or appropriated without the consent of the owner thereof. [El. Sup. § 1136.]

Sec. 4203*h*. Bonds—Borrowing money. 8. Such company may, from time to time, borrow such sums of money as it may deem necessary for completing its water-works, and issue and dispose of its bonds for any amounts so borrowed, for such sums at such rate of interest as may be lawful, and may secure the payment of such bonds, or any debts which it may contract, by deed of trust or mortgage on part or all of its corporate property, right of way, easements and franchise. [El. Sup. § 1137.]

Sec. 4203*i*. Consent of town. 9. This act shall not grant the powers and privileges herein conferred to any corporation other than such as have, by ordinance or otherwise, obtained legal consent and full right of way for the operation of water-works and the laying of the necessary pipes, mains and conduits along and through the streets, alleys, avenues and public grounds of the town in which such water-works are to be operated, from the board of trustees of said town. [El. Sup. § 1138.]

Sec. 4203*j*. Existing companies. 10. Any water-works company heretofore incorporated and now existing, which holds or shall obtain franchise in this act, shall have the powers and privileges conveyed herein and be limited by the restrictions and liabilities set forth in this act. [El. Sup. § 1139.]

CHAPTER XLV*B*.

CANALS USED FOR WATER-WORKS.

SEC.

4203*k*. Completion of unfinished canals—Purposes—Record.
4203*l*. Articles of association.
4203*m*. Directors—Powers—Election.
4203*n*. Collection of calls.
4203*o*. Right of way.
4203*p*. Reorganization of existing companies.
4203*q*. Liability of stockholders.
4203*r*. Power of directors.
4203*s*. Effect of act.

[1852 S., p. 93. Approved June 17, 1852, and in force November 6, 1852.]

SEC. 4203*k*. Completion of unfinished canals—Purposes—Record. 1. Any and all persons, corporations, or associations, who may have purchased from the State of Indiana any of the unfinished canals of the State, or any part of either of them, and their successors and assigns, or any of them, may proceed to the completion of any such canal in whole or in part, or to the construction of any water-works or water-ways in connection therewith, either for navigation or hydraulic purposes or for the purpose of supplying cities or towns with water, upon complying with the regulations and subject to the restrictions in this act provided. But nothing in this act shall be so construed as to permit any such company to use such hydraulic works, or to take water from the canal for either of the purposes herein designated, unless such company shall first complete and place such canal in good navigable order from the point of commencement (or from the city of Indianapolis) of the Central canal to the point where it is proposed to construct hydraulic works, or take water for the supply of cities and towns as aforesaid: *Provided, however*, That no association or company which may have succeeded, by purchase or otherwise, to the rights or interest of the State in any canal or the appurtenances thereunto belonging shall acquire or exercise any of the rights or powers specified in this act, until such association or company shall have executed to the State an additional bond, with such penalty and with such securities as may be designated and required by the governor, auditor, and treasurer of state, or either of them, to indemnify the State against all liability on account of any leases heretofore granted by the State of the water-power connected with such canal, if required so to do by the officers aforesaid or either of them; and such additional bond shall be required unless the

State is already sufficiently indemnified against or on account of such leases. [R. S. 1881, § 3580.]

1. The act of 1859 in relation to the Central Canal Company, being local in its character, is omitted here. It will be found on page 167, Acts of 1859, and took effect August 6, 1859.

2. Construed, 53 Ind. 575.

Sec. 4203*l*. Articles of association. 2. Any such persons, corporation, or association, or their successors or assigns, desirous of availing themselves of the provisions of this act, may do so by filing a copy of their articles of association in the office of the secretary of state, containing a statement of the name of such association, the amount of its capital stock, and the number of shares therein, and setting forth, fully, the objects for which such association is established. Such association shall thereupon be a body corporate and politic; and, by its corporate name, may sue and be sued; may devise and use a corporate seal; may receive and hold, for the purposes of its association, any lands and property; and, under its corporate seal, and the attestation of its presiding officer, may execute conveyances of lands, covenants, and powers of attorney, and, also, bonds of a denomination not less than five hundred dollars; and whenever such bonds are negotiated, they may bear such rate of interest as the association may direct, not exceeding the rate of interest allowed by law where the loan is made. [R. S. 1881, § 3581.]

Sec. 4203*m*. Directors — Powers — Election. 3. Such association may elect directors for the management of its affairs, in such manner as it may direct by its articles of association, and may confer upon them such powers in relation to the appointment of officers, and the conduct of the business of the association, as it may see fit: *Provided*, That in all elections by such association, each share of stock shall be entitled to one vote, which may be given in person or by proxy. [R. S. 1881, § 3582.]

Sec. 4203*n*. Collection of calls. 4. It shall be lawful for the directors to call in and demand from the stockholders, respectively, any installments of the stock by them subscribed, not exceeding five per cent. per month, under the penalty of forfeiture of the stock subscribed for, together with all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after personal demand or notice of such call shall have been published in some newspaper of general circulation in the vicinity of such work. [R. S. 1881, § 3583.]

Sec. 4203*o*. Right of way. 5. Any such association or corporation shall have the right to take possession of, and appropriate to its own use or occupation, wholly or in part, for either of the purposes herein specified, sufficient lands for a right of way, upon first making payment or tender of payment therefor, or for the

damages occasioned to the owner thereof, in accordance with the requirement of the constitution of this State; and the value of such property so appropriated, or the damages occasioned to the owners of any such property, shall be assessed, awarded, and adjudged, and payment or tender of payment therefor made, as provided in the act entitled "An act to provide for the incorporation of railroad companies," [§§ 3906 to 3910]; and the proper courts shall have the same jurisdiction and powers, and shall cause the same proceedings to be had in every such case; and the associations herein provided for shall, in all such cases, acquire all such rights in relation to the use, occupation, and ownership of lands, rights of way for their uses and purposes, as are provided in the said act in regard to associations organized for the construction of railroads, so far as the provisions of the said act can be made applicable to the purposes of this act. [R. S. 1881, § 3584.]

Sec. 4203*p*. Reorganization of existing companies. 6. Any existing corporation, organized for any two or more of the purposes contemplated in this act, may reorganize into separate associations, so that each shall embrace one or more of such objects; and they may make such increase in their capital stock, and such modifications of the purposes of their organization, within the purview and subject to the general provisions of this act, as the stockholders may direct. [R. S. 1881, § 3585.]

Sec. 4203*q*. Liability of stockholders. 7. The stockholders of any association formed under the provisions of this act shall be individually liable for all the liabilities of such association, to an amount equal to their respective shares in such association. [R. S. 18[illegible], § 3586.]

Sec. 4203*r*. Power of directors. 8. In the construction of any of the unfinished canals of this State, it shall be lawful for the board of directors of such company to direct the separation of the water-works or manufacturing privileges from the navigation purposes of the same, and to make such disposition of such parts thereof, as the board of directors may deem best for the interests of the company; provided said disposition does not injure or impair the right and franchises of any other company. [R. S. 1881, § 3587.]

Sec. 4203*s*. Effect of act. 9. Nothing in this act shall be so construed as to affect, in any manner, the charter of any water-works company heretofore granted. [R. S. 1881, § 3588.]

CHAPTER LII.

EDUCATION—COMMON SCHOOLS.

ART.

1. *The Fund.*
2. *Administration.*
2a. *School Books.*
3. *Taxation.*
4. *Enumeration.*
5. *Apportionment of Revenue.*

ART.

6. *Schools in Cities and Towns.*
7. *Schools and School Houses.*
8. *Teachers' Institutes.*
9. *Free Libraries.*
10. *General Provisions.*

ARTICLE 1—THE FUND.

SEC.

4325. What constitutes.
4325*a*. Estrays and property adrift.
4326. Counties liable.
4327. Account of fund.
4328. Custody of lands—Report of income.
4329. Leasing lands.
4330. Divided school section.
4331. Boundaries of townships.
4332. School township, when county lines divide.
4333. Auditor's statement as to children.
4334. Auditor's duty.
4335. Account and distribution.
4336. Duties of the other auditor.
4337. Account—Re-adjustment.
4338. Power of trustee.
4339. Sale of school lands.
4340. Proceedings to sell.
4341. Ballots.
4342. Result of election.
4343. Certificate of vote.
4344. Trustee's duty.
4345. Order and conduct of sale—Fee.
4346. Terms of sale—Timber.
4347. Forfeiture—Re-sale.
4348. Forfeiture, how prevented.
4349. Forfeiture—Liability for waste.
4350. Suit for waste.
4351. Private sale.
4352. Re-appraisement.
4352*a*. Advertisement of funds.
4352*b*. Re-appraisement of forfeited lands.
4352*c*. Appropriation by commissioners.
4352*d*. Repeal of conflicting laws.
4353. Certificate of purchase.
4354. Rights of purchaser.
4355. Failure to make first payment—Penalty.
4356. Assignments.
4357. Defective assignments—Proceedings.
4358. Loan of purchase-money.
4359. Payments.
4360. Lost certificate.
4361. Purchase-money, where paid.
4362. Duty of auditor.
4363. Deed.

SEC.

4364. Sale—Legalization.
4365. Title, when complete.
4366. Sale had without vote.
4367. Failure of title.
4368. Lands of surplus revenue fund, how sold.
4369. Loans of fund—Interest.
4369*a*. Laws repealed.
4370. Auditor's duty.
4371. Appraisement.
4372. Duty of appraisers.
4373. Preferred borrowers.
4374. Limit of loan.
4375. Certificate as to liens.
4376. Oath of applicant.
4377. Time of loan.
4378. Limit of amount.
4379. Acknowledgments and oaths.
4380. Record of mortgages—Priority.
4381. Auditor's duty.
4382. Fees.
4383. Interest unpaid—Auditor's duty.
4383*a*. Collections on default.
4384. Fund to be specified.
4385. Form of mortgage.
4386. Form of note.
4387. Warrant to borrower.
4388. Payments—Quietus.
4389. Indorsements and satisfaction.
4390. Suit for deficiency.
4391. Notice of sales.
4392. Manner of sale—Surplus.
4393. Auditor's bid.
4394. Sale of lands bid in.
4395. Deed by auditor.
4396. Statement of sales.
4397. Title in State without deed.
4398. Annual report.
4399. Duty of board.
4400. Board's report.
4401. Disposition of report.
4402. Apportionment of loans.
4403. Miscellaneous school-fund account
4404. Distribution and report.
4405. Penalty against auditor.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4325. What constitutes. 2. The funds heretofore known and designated as the surplus revenue fund, all funds heretofore appropriated to common schools, the saline fund, the bank-tax fund, the fund which has been derived or may be derived from the sale of county seminaries and the property belonging thereto, the moneys and property heretofore held for such seminaries, all fines assessed for breaches of the penal laws of the State, all forfeitures which may accrue, all lands and other estate which shall escheat to the State for want of heirs or kindred entitled to the inheritance thereof, all lands which have been granted, or may be granted hereafter, to the State, when no special object is expressed in the grant, the proceeds of the sales of the swamp lands granted to the State of Indiana by the act of Congress of September, 1850, the taxes which may be assessed from time to time upon the property of corporations for common school purposes, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana, shall be denominated the "common school fund." The fund derived from the sale of congressional township school lands, and the unsold congressional township school lands, at the reasonable value thereof, shall be denominated the "congressional township school fund," and shall never be diminished in amount, the income of which, together with the taxes mentioned and specified in the first section of this act [§ 4465], the money and income derived from licenses for the sale of intoxicating liquors, and unclaimed fees, as provided by law, shall be denominated the "school revenue for tuition," the whole of which is hereby appropriated, and shall be applied exclusively to furnishing tuition to the common schools of the State, without any deduction for the expense of collection or disbursement.

1. *Two distinct funds.* This section, in conformity with the decisions cited under § 183, provides that there shall be two distinct funds, the "common school fund" and the "congressional township school fund," which must be kept apart and managed separately (§ 4327). Under the former title are consolidated all the funds named in the constitution, except the congressional township fund, and in addition thereto "all funds heretofore appropriated to common schools," referring to all moneys arising from the sale of estray animals, and property taken up adrift, which were, by an act approved January 15, 1844, transferred to the common school fund of the county to be ratably apportioned among the several school districts thereof, § 4325*a*. Neither of these funds shall ever be diminished, for the term common school fund in the constitution includes both, § 183, *notes*.

2. *Revenues.* Of the "school revenue for tuition" the interest on the common school fund, the proceeds of the state tax, and the unclaimed fees are paid into the state treasury and apportioned to the counties by the superintendent of public instruction semi-annually on the basis of school population, §§ 4477–4482. The revenues derived from the congressional township fund and from county liquor licenses are distributed by the county auditors to the townships and counties to which they respectively belong, § 4486 and R. S. 1881, § 5316; 70 Ind. 241.

3. *Fees of officers.* No deduction shall be made from the school revenues for expense of collection or disbursement, but the county auditors shall receive from the general funds of the counties the amount of one per cent. on the per-

manent school funds held in trust by their several counties, as compensation for the management of them, R. S. 1881, § 5909; 53 Ind. 123, § 188, *notes*.

4. *Illegal deductions recoverable.* By the school law of 1865 the income of the common school fund and the taxes levied and collected for tuition are required to be applied exclusively to furnishing tuition in the common schools of the State. Provision is made for payment out of the county fund of the fees of officers for collecting, managing and dispensing the tuition fund (R. S. 1881, §§ 5909, 5927, 5928). From the constitutional and statutory provisions it is manifest that, with reference to common school funds, the State and county act simply as trustees for the benefit of the schools of the State. The county can not repudiate or disavow its trust, and where it misappropriates common school funds, no failure of the proper officers to bring suit for any length of time after notice of the misappropriation can be set up by way of limitation to the action to the prejudice of the beneficiaries of the trust, § 188, *notes*.

5. *Fines.* Fines imposed for contempts of courts belong to the school fund, 63 Ind. 81.

5. *Mandamus.* The proper application of trust funds may be enforced by mandate, 96 Ind. 279.

6. *Liquor licenses.* Funds derived from liquor licenses are diverted from this fund by a later act [R. S. 1881, § 5316], 70 Ind. 241. Compare 53 Ind. 123. See also § 4254.

7. *Sale of escheat lands.* By an act of 1889 (p. 307; El. Sup. §§ 1644 to 1656), provision is made for the sale of escheated and other lands and collecting the rents thereon, and turning the proceeds into the common school fund. An act of 1883 (p. 98; El. Sup. §§ 429 to 431) also authorized the board of county commissioners to sell escheated lands.

[1844, p. 86. Approved and in force January 15, 1844.]

SEC. 4325*a*. Estrays and property adrift. 1. All moneys arising from the sale of estray animals and property taken up adrift, so soon as the same shall have vested absolutely in any county, shall be, by the proper officers, transferred to the common school fund of the county, and shall be ratably apportioned amongst the several school districts thereof.

The above section is in force, 92 Ind. 353.

SEC. 4326. Counties liable. 3. The several counties of this State shall be held liable for the preservation of so much of said fund as is intrusted or may have been intrusted to them, and for the payment of the annual interest thereon, at the rate established by law, the payment of which interest shall be full and complete every year, and shall so appear in the auditor's report to the superintendent of public instruction; and the said superintendent shall, at any time, when he discovers, from the report, or otherwise, that there is a deficit in the amount collected, for want of prompt collection, or otherwise, direct the attention of the board of county commissioners and the county auditor to the fact, and said board of commissioners are hereby authorized and required to provide for such deficit in their respective counties.

1. *Interest.* This section is designed to carry out the requirements of the constitution, § 187. The interest on the school funds is at the rate of six per cent., § 4369.

2. *Deficits made up.* The board of county commissioners is required to make up losses to both the principal and interest of the funds, at their June meeting (§ 4399), by authorizing the auditor to draw a warrant for the amount

of the deficit upon the general fund of the county in favor of the particular school fund found deficient, and upon failure of the board so to act they become liable to an action in the name of the State upon the relation of the superintendent of public instruction, who may notify the proper prosecuting attorney to bring such action; or the attorney general may bring the action upon his own relation, 92 Ind. 353.

3. *Money unloaned.* If the money is unloaned, the county must pay the interest that would have accrued thereon if loaned, 122 Ind. 333.

4. *Enhancing the fund.* It never was the intention of the constitution that the school fund entrusted to a county should be enhanced at the expense of the county; but simply that the fund should be preserved intact, and the interest annually paid, 122 Ind. 333.

SEC. 4327. Account of fund. 151. The county auditors of the several counties of this State shall, immediately upon the taking effect of this act, open an account upon their books with each of the congressional townships of their respective counties whose funds are managed by them, and transfer to such account, from the common school fund account, the principal of the congressional township fund, as it existed before its consolidation with the common school fund, and shall thereafter keep a separate account of the principal and interest of the congressional township fund of each township.

1. *School section.* The fund derived from the sale of the "school section" can not be diverted by legislation from the use of the inhabitants of the congressional township. It was a grant to them by the United States, 6 Ind. 83; 7 id. 570, 636; 22 How. 56; 44 id. 38.

2. *Proceeds of lands.* When the school sections have been sold the proceeds of the sale are managed by the county auditor, and the interest thereon distributed by him through the county treasury to the proper school trustees, 44 Ind. 38; S. C. 94 U. S. 792. See § 187, *notes*.

[1873, p. 79. Approved and in force March 7, 1873.]

SEC. 4328. Custody of lands—Report of income. 44. The custody and care of all lands belonging to the congressional township fund shall be with the trustee of the civil township in which the same shall be situated; who shall report, annually, to the auditor, by the fourth Monday in March, the annual income derived therefrom, to the township. And the report shall embrace a fully itemized statement of his rent account of such lands; to whom and for what amount the same was rented to each tenant; and whether the rents have been collected or not; and if any portion has not been collected, he should state fully the reasons why the same has not been collected. Any trustee who has heretofore failed and neglected to so report shall embrace in his first report such itemized statement and showing for each preceding year not so reported, whether by himself or his predecessors; and the amount of school funds for any year, to which such township might otherwise be entitled, shall be withheld, and not paid over to such trustee, if the rental value of such lands for such terms shall equal or exceed the township's otherwise portion of the school fund; and it shall be the duty of such trustee to pay into the county treasury all rents collected and reported by him as aforesaid.

1. *Rents distributed.* The rents of school lands shall be paid into the county treasury, to be distributed by the auditor together with, and in the same manner as, the interest on the congressional township fund. And a township trustee who fails to pay the rents into the county treasury, as therein required, is, with his county, liable on his bond for the amount, with ten per cent. damages, in a suit in the name of the State on relation of the board of commissioners, 44 Ind. 38; 94 U. S. 192; §§ 187, 188.

2. *Must be paid in full.* The trustee can not withhold a balance of rent on hand at the date of settlement, to be expended in repairs during the ensuing year, *Buskirk, Atty. Gen.*

3. *The equalization of revenue* among townships by taking into consideration the congressional township revenue, is constitutional, § 4486, *note* 1.

4. *Adverse possession.* The lands were selected by the secretary of the treasury for school purposes, under the act of Congress of May 20, 1826 (U. S. Stat. at large 4, vol. 179), the title vested in the inhabitants of that congressional township, and a cause of action to recover the possession of the lands from one holding them adversely accrued at that time. The fact that the claimant entered into possession of the land while the title was in the United States did not prevent his holding from becoming adverse to the township as soon as the title vested in it, 29 Ind. 70.

5. *Lands substituted.* Where land originally granted to the State for school purposes became unavailable, and other lands were substituted, it must be shown that such substituted lands were actually selected by the treasury, as required by the statute of the United States, in an action of ejectment when title must be traced to the United States; for without such selection no title passed, 101 Ind. 366.

6. *Drainage.* A congressional section can not be assessed with benefits in the construction of a public ditch, 26 N. E. Rep. 156; S. C. 126 Ind. 261.

[1865. Approved and in force March 6, 1865.]

SEC. 4329. Leasing lands. 45. He shall have power, when directed so to do by a vote, or by the written direction of a majority of the voters of the congressional township to which the same belongs, to lease such lands for any term not exceeding seven years, reserving rents, payable in money, property, or improvements upon the land, as may be directed by the majority of such voters.

1. *Voters.* The voters here intended are such persons as are entitled to vote at general and township elections, as defined in the constitution, § 84. The election is held in accordance with the general election law, § 4710*j*.

2. The lessee of school land, the rental of which he was to pay in permanent improvements on the land, contracted for and proceeded to construct a building which he had calculated would amount to the same as the rent for the rest of the term; he discovered when work was begun that it would cost more, and so informed the trustee, who promised to extend the lease at the expiration of the term; at the expiration of the term the voters of the township elected to sell the land and it was sold; the trustee issued to the tenant a certificate for the amount he had expended over and above the rent, showing the township indebted to him in that sum. Held, that no authority is given trustees to incur debts in improving school lands, and, as the tenant was bound to know this the certificate could not be enforced against the township, 27 N. E. Rep. 439.

SEC. 4330. Divided school section. 46. When the sixteenth section, or the section which may be granted in lieu thereof, shall be divided by a county or civil township line, or where the substituted section lies in any other county in the State, the voters of the congressional township to which the same belongs shall designate, by vote or by the written direction of a majority, the trustee

of one of the civil townships including a part of said section, to have the care and custody of said section, and to carry out the directions of the voters of the township in relation thereto; and the trustee so designated shall have the same powers and perform the same duties as if the entire section was situated within the limits of the civil township, and receive from the county treasurer the revenue derived from funds accrued from said sale.

Sec. 4331. Boundaries of townships. 148. The county commissioners of each county are required to conform the boundary of their civil townships to those of congressional townships, so far as it is practicable to do so.

The county commissioners have full power to determine the boundaries of civil townships. R. S. 1881, § 5987.

[1877 S., p. 66. Approved and in force March 12, 1877.]

Sec. 4332. School township, when county lines divide. 1. Where county lines divide a congressional township, the proper officer in the county in which the congressional school lands are situated, or would be situated if unsold, shall control such lands and the funds arising therefrom, as in this act is provided.

These six sections (4332–4337) provide for the transfer from one county to another of the principal of the fund belonging to congressional townships divided by county lines, so that the share of each part of such township may be controlled and managed by the auditor of the county in which such part lies. This transfer of the fund is intended to put an end to the system by which an auditor of one county is obliged semi-annually to apportion congressional township revenue between the parts of townships lying in his own and other counties, as provided for by §§ 4432 and 4480, and which proved very unsatisfactory in its working.—*Holcombe, Supt.*

Sec. 4333. Auditor's statement as to children. 2. When the enumeration is made of children, under the school laws, the auditor of each county shall furnish to the auditor of the other a statement showing the number of children in each congressional township; and to enable him to do this correctly, the person or officer making the enumeration shall correctly state the number of children in the congressional township so divided by county lines.

See § 4472.

Sec. 4334. Auditor's duty. 3. The auditor of the county having control of the fund shall open an account with the other county as to each congressional township, and credit said other county with all money on hand, all securities for lands sold, and, if any lands be unsold, with the proceeds when sold; and, from time to time, as money comes in, shall credit such county with such money—that is to say, shall divide such money *pro rata* on the basis of such enumeration, and enter the credit; and shall pay over such money, be it little or much, to the treasurer of such other county, file his receipt with the auditor, and take a quietus; and so continue until the whole portion due such other county is paid over.

Such payments shall be made quarterly, to correspond with the fiscal year.

1. *Recommendation.* It is recommended that no payments be made between May 1st and July 1st, thus allowing the auditor of counties to receive all remittances in time to include them in the June reports of the auditor and commissioners to the superintendent of public instruction.—*Holcombe, Supt.*

2. *Loan to auditor.* Where the auditor of a county drew a warrant in his own favor for one thousand dollars, as a pretended loan from the congressional township school fund, and received the money, a cause of action, it was held, at once accrued on his bond, and a suit thereon, commenced more than three years thereafter, was held barred. Such a *loan*, it was held, is *void*, although all the requirements of the statute be observed. The auditor is not a trustee of the congressional township school fund, 74 Ind. 181. But this case was afterwards limited, so as to hold that the loan was only voidable, if the county so choose to regard it; but void, if the county willed it to so be. If the county sees fit to foreclose the mortgage, it may so do, and enforce it, both against the auditor and those claiming under him, as a means of reimbursing the fund, looking only to the auditor and his sureties for any deficiency that may remain after the mortgaged land has been exhausted, 99 Ind. 77; 101 Ind. 1, 532. The want of authority in an auditor to make a loan to himself constitutes no defense for him or any other person made a party to a forclosure of proceedings of the mortgage; and the mortgage remains a subsisting security for the loan against the mortgagor or even his vendee for value and without notice, notwithstanding the reimbursement of the school fund out of the county revenues; and also notwithstanding an entry on the margin of record of the refunding, and the surrender of the mortgage without indorsement of satisfaction thereon, and without satisfaction of record, 101 Ind. 532. Such a mortgage draws the same *interest* after foreclosure as before maturity, 101 Ind. 1.

Sec. 4335. Account and distribution. 4. Such auditor of the county controlling such lands and fund shall also open an account with such lands and with the township in his own county divided by county line, and shall debit and credit such accounts as he receives money or securities from sales or collections from lands forfeited and re-sold, and all expenses in full and regular order of entry and accounting, so he can tell, at any time, the condition of the lands, funds, and securities. He shall collect in, as fast as possible, all moneys outstanding, make proper distribution as per enumeration, and credit the proper account in said county, and continue to pay over to the other county, as above provided, until each county has its proper proportion of said funds.

Sec. 4336. Duties of the other auditor. 5. The auditor of such other county shall open an account with the proper township in his county, and credit such fund as fast as received; and, when in sufficient amount, shall loan the same as now required by law. Both auditors shall make a statement of the condition of the fund annually, at the end of the proper fiscal year, and file one copy with the superintendent of public instruction, lay one before the county commissioners (which latter shall be spread upon their record), and both shall be sworn to by the auditor.

Sec. 4337. Account—Re-adjustment. 6. The process contemplated by this act shall continue so long as any lands remain unsold, or any securities are uncollected, and until each county

shall have become possessed of its proper share of such fund in money, when the accounts here required to be kept shall be closed and reported as aforesaid: *Provided*, That in the year 1890, and every two years thereafter, there shall be a re-adjustment of said fund belonging to such congressional township, upon the basis of the number of children enumerated in each part of such congressional township, as hereinbefore provided; and the auditor having a surplus of such fund, according to such basis, shall pay to the treasurer of the county interested the amount of money due said county upon the *per capita* basis then existing. For the services here provided for, the auditor shall be allowed the same fees for records, certificates, and other labor, as is allowed by law for other similar services.

1. *Explanation.* The process contemplated by the foregoing sections (4432–4337) began in 1877 and will probably be completed by 1890, when those sections will become obsolete and the provisions of this section will come into effect.—*Holcombe, Supt.*

2. The auditor's fees must be paid out of the general fund of the county, § 4325, *note* 3.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4338. Power of trustee. 47. The proper trustee shall have all the rights and powers of a landlord, in his official name, in coercing fulfillment of contracts relating to such lands, and preventing waste or damage, or for the recovery of the same when committed.

Sec. 4339. Sale of school lands. 48. At any time when five voters of any congressional township shall, by petition to the trustee having charge of the school lands belonging to such township, set forth their desire for the sale of all or any part of the school land, the trustee shall give public notice, in five public places in such township, of the time and place in such township when and where a balloting will be had to determine whether the lands shall be sold as petitioned for or not; which notice shall be given at least twenty days before the time specified therein.

Voters. The voters here referred to are such as are entitled to vote at general and township elections, by the constitution, § 84. See § 4366.

Sec. 4340. Proceedings to sell. 49. A copy of such petition shall be entered on the book containing the record of the proceeding of such trustee; and his action thereon shall, also, be recorded.

Sec. 4341. Ballots. 50. If a voter favor the sale of such lands, he shall write on his ballot the word "Sale"; if he oppose the sale, he shall write the words "No sale."

Sec. 4342. Result of election. 51. No sale shall be allowed unless a majority of all the votes cast at such election shall be in favor of such sale; nor unless the number of votes constituting such majority shall exceed fifteen.

Sec. 4343. Certificate of vote. 52. The trustee shall attend at the time and place specified, and shall make out a certificate showing the number of votes given for and against such sale; which shall be signed by him and filed in his office; and he shall enter the same upon his record-book.

Sec. 4344. Trustee's duty. 53. Said trustee, if satisfied that a majority of all, and more than fifteen, voters have voted for such sale, shall enter the same on his record-book, and proceed—

First. To divide the lands, so voted to be sold, into such lots as will secure the best price.

Second. To affix a minimum price to each lot, not less than one dollar and twenty-five cents per acre, below which it shall not be sold.

Third. To certify such division and appraisement to the proper county auditor, together with a copy of all his proceedings in relation to the sale of said lands.

1. *Re-sale of land.* Land having been sold at the minimum price, and forfeited to the township by failure of purchaser to make deferred payments, vests absolutely in the township, and a re-sale of it must be governed by all the requirements of this section.—*Woollen, Atty. Gen.*

2. But any excess above the amount owing under the first appraisement and sale shall be paid to the first purchaser or his representatives, § 4347.

3. *When petition not necessary.* Where school land was sold in 1847, and for non-payment of interest due on the purchase-money, was again sold in 1883, four weeks' notice of the latter sale was held sufficient under the law then in force, and a petition from the voters of the township was not necessary, such petition being required only when the land is first offered for sale, 110 Ind. 519.

Sec. 4345. Order and conduct of sale—Fee. 54. Such certificate and return shall, by such auditor, be laid before the board of county commissioners, at their first meeting thereafter; and said board, if satisfied that the requirements of the law have been substantially complied with, shall direct such lands to be sold; which sale shall be conducted as follows:

First. It shall be made by the auditor and treasurer.

Second. Four weeks' notice of the same shall be given, by posting notices thereof in three public places of the township where the land is situated, and at the court-house door, and by publication in a newspaper printed in said county, if any—otherwise, in a newspaper of any county in the State situated nearest thereto. The sale shall be made by the auditor, at public auction, at the door of the court-house of the county in which the land is situated, and the treasurer shall take an account thereof; and each of the said officers, for making such sale, shall receive a fee of one dollar, to be paid by the purchaser.

1. *Board must act.* If the law has been complied with, the board may be compelled by writ of mandate to order the sale. The order may be made at a special session. The land can not be sold below the appraised value, of which the purchaser must take notice.

2. *Place and manner of sale.* The sale must be at the door of the court-house of the county wherein the land lies, at public auction, 110 Ind. 519.

[1875, p. 134. Approved and in force March 9, 1875.]

SEC. 4346. Terms of sale—Timber. 55. One-fourth of the purchase-money shall be paid in hand and the interest for the residue for one year in advance, and the residue in ten years from such sale, with like interest annually in advance; and deferred payments shall be regarded as a part of the congressional township school fund, and reported as such by the auditor to the superintendent of public instruction: *Provided*, That when one-fourth part or more of the value of the lands so sold, at the time of such sale, shall consist of the timber growing thereon, the terms of sale in such case may be as follows, viz.: At least one-half of the purchase-money cash in hand, and interest for the residue for one year in advance, and the residue in annual payments in not exceeding ten years from such sale, with like interest annually in advance; and in such case the terms of sale shall be set forth in the notice provided for in the preceding section; *And Provided, further*, That whenever the purchaser of any such land shall be proceeding to cut or remove, or threaten to cut or remove, from such lands, so sold, timber growing or being thereon, to such an extent that the land, after the cutting or removal of such timber, shall not be equal in value to the amount of purchase-money, with interest then remaining unpaid, it shall be the duty of the trustee of the civil township in which such land is situated (and he is hereby authorized and empowered) to commence and maintain an action, in the name of such township, in the circuit court of the county, to restrain and enjoin the further cutting or removal of such timber.

1. *Interest—Cash sales.* Interest on deferred payments must be at the rate of eight per cent., R. S. 1881, § 5205. But sales may be made for cash, § 4359. Not so in case of lands forfeited to the school fund, § 4393, *note* 1.

2. *Injunction.* It is the duty of the prosecuting attorney to bring the suit of injunction, at the instance of the trustee.—*Baldwin, Atty. Gen.*

3. *Redemption.* A purchaser of school lands having made default in the payment of interest on the purchase-money, the lands were re-sold. By the law in force at the time of his purchase, a defaulting purchaser had a right to redeem within one year after sale; by that in force at the time of the sale, and at the time of the default, a delinquent purchaser could redeem at any time before the sale, but not after. It was held that the right to redeem was governed by the latter law, 31 Ind. 11.

4. *County liable for interest.* The county is chargeable with interest on the entire amount of the price of the land, and the default of a purchaser of the land in paying deferred installments, and the consequent forfeiture of the land to the school fund, does not relieve the county of liability for interest on the full amount, 120 Ind. 442.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4347. Forfeiture—Re-sale. 57. On failure to pay such annual interest when it becomes due, the contract shall become forfeited, and the land shall immediately revert to the township; and the auditor and treasurer shall proceed, forthwith, again to sell the same, in like manner and on the terms above specified. If, on such second sale, such land shall produce more than sufficient to

pay the sum owing therefor, with interest and costs and five per cent. damages, the residue shall, when collected, be paid over to the first purchaser or his legal representative.

1. See §§ 4344 and 4394.

2. *Damages.* The damages mentioned in this section and in §§ 4390 and 4392 belong to the fund from which the loan was made.—*Baldwin, Atty. Gen.*

3. *Effect of forfeiture.* A forfeiture under this section does not divest the title of the purchaser to the real estate, but simply authorizes the State to sell it for its own reimbursement, the surplus going to the purchaser, 124 Ind. 560.

Sec. 4348. Forfeiture, how prevented. 57. At any time before the sale, payment of the interest due and all costs, together with two per centum damages on the principal sum and interest due and owing for said land, shall prevent such sale, and revive the original contract.

Sec. 4349. Forfeiture—Liability for waste. 58. In case of such forfeiture, the original purchaser may be sued for waste or unnecessary injury done to such land.

Sec. 4350. Suit for waste. 59. Such suit shall be prosecuted by the auditor, in the name of the State, for the use of the proper congressional township.

Sec. 4351. Private sale. 60. When any land offered for sale at public auction shall remain unsold, the county auditor may dispose of the same at private sale for the best price that can be had therefor, not being less than the minimum price affixed thereto.

This section authorizes a private sale only where the land has been offered for sale at public auction and remains unsold, 110 Ind. 519.

Sec. 4352. Re-appraisement. 61. After the expiration of the term of four years after any appraisement and offer for sale of any lands in this State belonging to any township for school purposes, and such lands remain unsold, it shall be lawful to re-appraise, sell, and dispose of said lands in the same manner that they would have been, had such lands not been previously offered for sale: *Provided, however,* That such appraised value shall not be below the minimum price now fixed by law.

[1883, p. 75. Approved and in force March 3, 1883.]

Sec. 4352*a*. Advertisement of funds. 1. Whenever, in any county of the State of Indiana, the school fund, or part of the school fund, apportioned to such county to be loaned out, remains unloaned, it shall be the duty of the auditor of said county to advertise, in the months of January, April, July and October, for three consecutive weeks, in a weekly newspaper published in said county, that such amount of the school fund remains unloaned, and that applicants for loans can secure the same by applying at his office and fulfilling the requirements of the law under which he is authorized to loan out the school fund. [El. Sup. § 1267.]

[1883 p. 79. Approved and in force March 3, 1883.]

SEC. 4352*b*. Re-appraisement of forfeited lands. 1. All lands which have become forfeited and have reverted, or may hereafter be forfeited and revert to the various townships in the several counties of this State, for failure to pay the interest or principal of the amount due thereon to the school fund, and which have remained, or hereafter remain unsold for the period of three years, by reason of the amount due thereon being in excess of the values of said lands, may be re-appraised and sold for a sum not less than said re-appraised value thereof; such re-appraisement and sale to be made in the same manner and upon the same terms and conditions as is now prescribed by law for the appraisement and sale of such lands. [El. Sup. § 1269.]

§ 4352 provides for the re-appraisement and sale of *any* lands in this State belonging to any township for school purposes, which is presumed to include lands forfeited in the manner indicated in this section. If such is the case, this section supersedes § 4352 as to such forfeited lands, but not as to congressional township lands which have never been sold. §§ 4347 and 4348 relate to the forfeiture and re-sale of lands originally belonging to and sold by the congressional townships, §§ 4383 and 4393 to forfeiture and re-sale of lands mortgaged to secure loans from either of the school funds. When a sale has not been effected on the appraisement required by § 4393, this section authorizes a re-appraisement and sale at the end of three years.

SEC. 4352*c*. Appropriation by commissioners. 2. Upon the sale of such lands as provided for in the preceding section of this act, the board of county commissioners of the several counties in which said lands are situated may make an appropriation, from the general county funds, a sum equal to the difference between the amount for which said lands shall have been forfeited and the amount for which such lands shall have last sold; said sum appropriated to be placed to the credit of the proper fund and loaned as other school funds are loaned. [El. Sup. § 1270.]

The duty of the board to make such appropriation is imperative, since the county is liable for all deficits in the funds entrusted to it, § 4326, *note* 2.

SEC. 4352*d*. Repeal of conflicting laws. 3. All laws and parts of laws in conflict with the provisions of this act are hereby repealed. [El. Sup. § 1271.]

1. *Note.* For the effect of this act (the three foregoing sections) on other provisions of the law, see § 4541*b*, *note* 1.

2. *Construed.* See § 4393, *note* 4; and § 4394, *note* 1.

[1865 p. 3. Approved and in force March 6, 1865.]

SEC. 4353. Certificate of purchase. 62. A certified statement of such sale shall be made and signed by the auditor, and, being first recorded by such auditor in the record of the board of county commissioners, shall be delivered to the purchaser when he makes his first payment, and shall entitle him to a deed when the terms of such purchase shall have been fully complied with.

A judgment is no lien on land held by a certificate of purchase under this section, even though the defendant has taken possession and paid the money

before the rendition of the judgment; and a sheriff's sale, on execution against the obligee of land so held, conveys no estate to the purchaser, 21 Ind. 112.

Sec. 4354. Rights of purchaser. 63. Every purchaser, until forfeiture, shall be entitled to all the rights of possession before existing in such trustee or township, and to all rights and remedies for rents becoming due or breaches of covenant occurring after his purchase under any lease existing at the time of his purchase, and for all waste committed thereafter.

Estoppel. Where the inhabitants of a township had received a part of the purchase-money of school lands, and interest for several years on the balance, and expended the money for the purposes contemplated by the grant, and the purchaser had taken possession and made valuable improvements; it was held that they must be deemed to have acquiesced in the sale, and that they were estopped to deny its validity, 14 Ind. 409.

Sec. 4355. Failure to make first payment—Penalty. 64. A purchaser at such sale failing to make the first payment as above required shall pay ten per centum on the sum bid, to be recovered by action before any court having jurisdiction, to be prosecuted by the county auditor in the name of the State for the use of the proper township; and the auditor and treasurer shall be competent witnesses.

Sec. 4356. Assignments. 65. No assignment of a certificate shall be valid unless acknowledged before some officer authorized to take acknowledgments of deeds, or before the county auditor, who shall, in all such cases, record the same. Assignments of certificates heretofore made before any officer authorized to take acknowledgments of deeds, when recorded, shall be as valid as if acknowledged before the county auditor.

[1863, p. 11. Approved February 27, 1863, and in force October 10, 1863.]

Sec. 4357. Defective assignments—Proceedings. 66. Whenever the certificate of the school commissioner or auditor of any county of this State, issued for land sold, has been assigned by any person without a proper acknowledgment before the county auditor or other proper officer, or assigned by delivery, and such assignor is deceased, any assignee of such certificate, claiming title to the land described therein, may file his complaint in the proper circuit court, making the county auditor and the heirs of such deceased assignor parties thereto. If it shall be proved to the satisfaction of the court, that the plaintiff or any party to the cause is the equitable owner of the land, and the purchase-money has been fully paid to the school fund, the court shall direct the auditor to execute a proper conveyance to the plaintiff or other parties entitled thereto, although the certificate has not been properly assigned or the assignment thereof properly acknowledged by the decedent. All other persons claiming any interest in the land may, on their application, be made parties and heard in the case. The auditor shall execute a conveyance, according to the directions

of the court; and such conveyance shall vest in the grantee the title of said land as fully and to all intents and purposes as if the certificate had been legally assigned and the assignment properly acknowledged.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4358. Loan of purchase-money. 66. When the residue of the purchase-money becomes due, the purchaser may retain the same as a loan for a term not exceeding three years, on payment, annually made in advance, of the interest thereon, at the rate then established by law for the loans of such funds; but he shall receive no deed until full payment is made.

Sec. 4359. Payments. 67. Purchasers may, at any time before due, pay a part or the whole of such purchase-money.

Sec. 4360. Lost certificate. 68. When any such certificate shall be lost before a deed be made, on proof thereof by affidavit of the person interested, or other competent testimony, to be filed with the county auditor, and after three months' notice of intention to apply for a new certificate, given in some newspaper printed nearest to where the land lies, such auditor may issue the same to the person entitled thereto.

See 50 Ind. 240, 244.

Sec. 4361. Purchase-money, where paid. 69. The purchase-money and interest, and all costs and damages above provided for, shall be paid to the treasurer of the proper county, and his receipt therefor filed, by the person paying, with the county auditor, who shall issue his quietus therefor.

Sec. 4362. Duty of auditor. 70. When such payment is in completion of any contract of sale, the amount of such receipt shall be indorsed by the county auditor on the certificate of purchase.

Sec. 4363. Deed. 71. On full payment for such land, a deed shall be issued by the county auditor, and entered on the record-book of the board of county commissioners.

[1877, p. 139. Approved and in force February 8, 1877.]

Sec. 4364. Sale—Legalization. 1. In all cases where school lands have been sold and certificate has either been issued to the purchaser or entered of record in the proper office, or otherwise, so the purchaser entered into possession and paid part or the whole of the purchase-money, or could have entered into occupancy, such sale shall be deemed and held a sale under the law, as much as it would be had a deed been made and delivered and the fee had been passed to the purchaser; and such lands shall be deemed and held as having been sold, so as to make them liable to taxation, within the meaning of the law, as fully and completely as they would have been had a deed been delivered. All

appraisements of land so sold, and all assessments of the same for taxes, and all levies and collections of taxes thereon, heretofore made, are hereby legalized and declared to be lawful and valid, and shall in nowise be subject to question by reason of such sale not having been consummated by execution and delivery of deed.

See § 6419, *notes*.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4365. Title, when complete. 72. Such deed shall be executed and acknowledged, at the cost of the grantee, by the county auditor, as in other cases; and, thus executed and delivered, shall vest in the grantee, his heirs and assigns, forever, a complete title to the land.

Sec. 4366. Sale had without vote. 73. The voters of any congressional township may, in the absence of a vote to sell land, and in lieu thereof, petition the trustee of the township for such sale. Such petition, if signed by a majority of all the voters of the township, shall be filed with the county auditor, and the same proceeding shall be had as provided in section fifty-four [§ 4345], upon a vote of the inhabitants of the township for such sale. Such petition and certificate shall be recorded in the record-book of the trustee of the township and of the county auditor of the investment of funds held for the benefit of common schools and congressional township.

See § 4329, *note*. After a petition has been filed, signers thereof can not withdraw their names in order to defeat the sale.

Sec. 4367. Compensation on failure of title. 150. When any officer authorized to sell school lands shall have sold any lands without a title thereto, such officer, or his successor in office, may convey such other lands of equal value as may be agreed upon by such officer and the purchaser, his heirs or assigns; or, failing to make such agreement, the purchase-money, with interest, shall be repaid to the purchaser, his heirs, executors, administrators or assigns; but no such purchase-money shall be thus repaid until the proper prosecuting or district attorney shall have investigated the facts of the case and certified to the correctness of the claim.

1. The sale of school lands in unauthorized subdivisions, made prior to March 3, 1855, was legalized by an act of 1855 (p. 144).

2. The rate of interest in such case will probably be six per cent, § 4369.

3. This section does not apply to title of lands mortgaged to school fund and sold by the auditor, § 4383, *note* 4.

[1855, p. 49. Approved March 1, 1855, and in force August 17, 1855.]

Sec. 4368. Lands of surplus revenue fund, how sold. Where the surplus revenue fund belonging to common schools, in any county in this State, or any part of such fund, has by any means become invested or changed into real estate, the board of commissioners of such county are hereby authorized to dispose of the same, by sale, in such manner as may seem best for the interests of the

common school fund, and to re-invest the proceeds of such sale in the manner directed by law for the investment of other moneys belonging to the common school fund.

This section is probably obsolete since the consolidation of the school fund.

[1889, p. 68. Approved and in force March 2, 1889.]

Sec. 4369. Loans of fund—Interest. 1. The principal of all moneys, whether belonging to the common school fund or to the congressional township school fund, received into the county treasury, shall be loaned at six per cent. per annum, payable annually in advance, and the interest paid out as prescribed by the school law of this State, and not otherwise; and any judgment upon any note or mortgage for any part of said funds shall bear eight per cent. interest from the date thereof till the same is paid. [El. Sup. § 1261.]

See § 5205, now repealed by this section as to school fund.

Sec. 4369*a*. Laws repealed. 2. All laws or parts of laws in conflict with provisions of this act are hereby repealed. [El. Sup. § 1262.]

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4370. Auditor's duty. 75. Such loans shall be made by the county auditor, who shall inform himself of the value of the real estate offered in the mortgage and be satisfied of the validity of the title thereof; and all persons applying for a loan shall produce to said auditor title-papers, showing to his satisfaction, a good and sufficient title in fee-simple, without incumbrance [,and] not derived from sale for taxes.

1. *Prior mortgage.* The existence of an incumbrance, to the knowledge of the auditor, does not invalidate the mortgage as against the borrower, 23 Ind. 416.

2. *Personal security.* A loan on personal security only, without a mortgage, though a violation of the auditor's duty, is nevertheless binding upon the borrower and the surety, 51 Ind. 52.

3. *Improper loans.* A county auditor can not loan school funds to himself, 74 Ind. 181. See § 4334, *note* 2. But may on real estate situated out of his own county, § 4373.

Sec. 4371. Appraisement. 76. The auditor shall require three disinterested freeholders of the neighborhood to appraise any land offered in mortgage.

Sec. 4372. Duty of appraisers. 77. Such appraisers, being first officially sworn, shall examine and appraise such land, and sign and give to the applicant a certificate, setting forth the fair cash value of the land at the time, without taking into consideration perishable improvements.

[1885, p. 195. Approved April 11, 1885, and in force July 18, 1885.]

Sec. 4373. Loans outside of county. 78. In making such loans preference shall be given to the inhabitants of the county: *Pro-*

vided, That whenever any of such funds shall have remained in the treasury of any county to which the same may belong for a period of three months without being loaned to any inhabitant of said county, then the auditor of said county may loan the same to any freeholder of any other county in Indiana upon his complying with the law regulating such loans. When the land received as security for any such loan is situated in any county of the State other than the one in which the loan is made, and there is default in the payment of interest or principal, the auditor of the county making the loan shall at once transmit to the auditor of the county where the land is situated a certified copy of the note and mortgage given for the loan, with a statement of such default in payment, and the auditor of such latter county shall, upon such certified copy, at once proceed to enforce the collection of such loan either by suit or sale of the land, as is now provided by law; and, after receiving such certified copy by said auditor, all steps taken, and all proceedings had, with reference to said loan or the land which was mortgaged shall be the same as if the loan had originally been made out of the funds belonging to said county; and all money collected or realized upon such loan shall at once, as soon as collected or realized, be paid over to the auditor of the county having made the loan. [El. Sup. § 1253.]

Heretofore loans could not be made on property situated outside the county. See 7 Ind. 77.

Sec. 4374. Limit of loan. 79. The amount loaned to any person shall not exceed two thousand dollars. [El. Sup. § 1254.]

The limit previous to this act was one thousand dollars.

[1881 S., p. 99. Approved and in force April 14, 1881.]

Sec. 4375. Certificate as to liens. 1. An applicant for a loan of a part of the common school fund or of the congressional township school fund shall file with the auditor of the county the certificate of the clerk and recorder of the county, that there is no incumbrance on the land offered as a security for the loan in either of said offices: *Provided*, That where the records, books, and papers of the clerk's office have been destroyed by fire, the clerk's certificate shall only state the fact and date of such destruction, and that there is no incumbrance on said land appearing from any of the records, books, and papers then on file in his office, and that there is no incumbrance on said land in his office of which he has any knowledge. The applicant shall also, in such case, execute to the State of Indiana, for the benefit of the common school fund, a bond, with one or more freehold sureties to the approval of the auditor, conditioned for the payment of so much of the loan as may be lost by reason of any incumbrance or lien upon the land which was evidenced by the records, books, or papers in the clerk's office which have been destroyed.

1. *Evidence.* In a foreclosure proceeding the certificate taken under this section and the affidavit under the following section are admissible in evidence, although probably immaterial, to show a compliance with the law in taking the mortgage, 101 Ind. 1.

2. *Irregularities of loan.* A complaint to enjoin a sale of land by a county auditor to satisfy a school fund mortgage, which shows that the plaintiff, after the mortgage was executed, purchased the land under the foreclosure of a secret vendor's lien antedating the mortgage, and alleges that the plaintiff, at the time the mortgage was executed, held a judgment against the mortgagor, but makes no claim of title under that judgment, and alleges further that the auditor in taking the mortgage failed to require an oath of the mortgagor, and a certificate of the clerk and recorder, that the land was unincumbered, and also failed to have the property appraised, as provided by law, is not sufficient to entitle the plaintiff to an injunction or to avoid the mortgage, 117 Ind. 328.

3. *Prior lien.* A school fund mortgage is not void because of another and prior lien on the land mortgaged, 23 Ind. 416.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4376. Oath of applicant. 81. Such applicant shall make oath that there is no incumbrance or better claim, that he knows of, and that the abstract of the title presented by him is, as he believes, a true one.

1. *Affidavit.* The law requires the affidavit as a safe-guard to the trust fund, not to the citizen, 117 Ind. p. 332.

2. *Married woman.* It is doubtful if a married woman, after making the statement here required, can defeat the mortgage she joins in on the ground that she gave the mortgage as surety for her husband, 123 Ind. 425.

Sec. 4377. Time of loan. 82. No loan shall be made for a longer term than five years.

[1885, p. 195. Approved April 11, 1885, and in force July 18, 1885.]

Sec. 4378. Limit of loan. 83. The sum loaned shall not exceed one-half of the appraised value of the premises proposed to be mortgaged, clear of all perishable improvements: *Provided,* That where such premises are situated in a county other than that which such fund may belong, the sum loaned thereon shall not exceed one-fourth of the appraised value of such premises, exclusive of perishable improvements. Such value to be determined by the existing laws of the State of Indiana. It is hereby made the duty of the board of commissioners of each county of this State, at their first regular session after the taking effect of this act, to appoint in each commissioner's district of the county three reputable freeholders, any two of whom, without the concurrence of the third, may act as school fund appraisers, whose duty it shall be upon oath to make all the appraisements of lands in their respective districts, required in this act or in the act of which this is amendatory. Said appraisers, or any of them, may be removed and new ones appointed by said board at any regular or special session, and in case any of such appraisers is at any time disqualified, by reason of kinship or interest, from acting, the appraisement shall be made by the other appraisers, who in case of a disagreement shall select

for making each appraisement, and be paid in the same manner as such appraisers are now paid. [El. Sup. § 2155.]

See § 4374.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4379. Acknowledgments and oaths. 84. The auditor shall have the power to administer all oaths and take all acknowledgments required by this act.

SEC. 4380. Record of mortgages—Priority. 85. Mortgages taken for such loans shall be considered of record from the date thereof, and shall have priority of all mortgages or conveyances not previously recorded, and all other liens not previously incurred, in the county where the land lies.

1. *Taxes and tax titles.* A sale of land for taxes which accrued after the execution of a school fund mortgage, is subject to the mortgage lien, 101 Ind. 1; see § 6446, *note* 3. The purchaser and grantee of real estate, under a tax deed, takes his title to such real estate under the provisions of § 6479, R. S., and subject to all the claims which the State may have thereon for taxes, or other liens or incumbrances, such as a mortgage executed thereon to the State, as a security for the payment of a loan to the school fund, prior to such tax sale and the execution of such tax deed. This is so, although the taxes for which the real estate was sold had been assessed and delinquent before the execution of such school fund mortgage, 95 Ind. 175.

2. *Registry.* The registry of a deed or mortgage is notice only to those who claim through or under the grantor or mortgagor. Parties holding or claiming through or under the mortgagor in a school fund mortgage are bound to take notice of the mortgage, although not recorded as required by the general registry law, 101 Ind. 1.

SEC. 4381. Auditor's duty. 86. The auditor shall cause such mortgages to be recorded immediately, retaining the cost of recording out of the money borrowed.

1. If the mortgage be recorded, not being acknowledged or proved as our general laws require to admit mortgages to record in the recorder's office, such record is no notice to subsequent *bona fide* purchasers. But the act of 1843, still in force (R. S. 1843, p. 245), requires that such mortgages shall be deemed recorded from their date; and this is such a notice as a *bona fide* purchaser for value is bound by it, 23 Ind. 416; 116 Ind. 383.

2. *Lien without record.* A school fund mortgage is a lien upon the land as to subsequent purchasers without being recorded, 98 Ind. 335.

3. *Action to cancel.* An action to cancel a mortgage can not be maintained against the county auditor; the State is the proper party, 123 Ind. 425.

SEC. 4382. Fees. 108. The following fees only shall be charged in cases of mortgage for loans: To each appraiser, fifty cents; for recording mortgage, one dollar; for drawing mortgage, one dollar; for making borrower's affidavit, ten cents; for clerk's certificate, fifty cents; for recorder's certificate and examining title, each one dollar; which shall be paid by the borrower.

SEC. 4383. Interest unpaid—Auditor's duty. 87. On failure to pay any installment of interest when the same becomes due, the principal sum shall forthwith become due and payable, and the

auditor may proceed to collect the same by suit on the note, or by sale of the mortgaged premises. He may also, by suit, recover the possession of the mortgaged premises before sale thereof; and he shall on the fourth Monday in March, annually, offer for sale all mortgaged lands on which payments of interest are due on the first day of January and unpaid on the day of sale.

1. *Statute mandatory.* In selling lands, the auditor must strictly follow the requirements of the statutes upon the subject. Where sale is made to make a greater sum than is due, the sale is void; and where the borrower has made a payment of interest, and failed to file the treasurer's receipt with the auditor, it will not excuse the auditor for selling to make a sum greater than is really due, 29 Ind. 1; 58 *id.* 543. The law in force at the time of sale, providing the method, notice, and other elements of remedy, governs the sale, 25 Ind. 4; 26 *id.* 450; 31 *id.* 11.

2. *Merger of mortgage.* After obtaining judgment and foreclosure by suit, the mortgage is merged; the auditor can not, then, sell under it, and such sale is a nullity, 65 Ind. 262.

3. *No warranty.* The State does not warrant the title of lands sold on account of the school funds. Officers should see that lands mortgaged to secure the school funds are properly described and unincumbered, but the purchaser at the mortgage sale takes whatever title he gets, and there is no law authorizing the refunding of purchase-money by the officers.—*Woollen, Atty. Gen.*

4. *Title from the State.* The title of a purchaser from the State, after the State has acquired title upon a forfeiture against a school fund borrower and mortgagee, takes precedence of any tax-deed or lien, whether State, city or county, for taxes that accrued subsequent to the school fund loan.—*Baldwin, Atty. Gen.* See § 4380, *note* 1.

5. *Can not release without payment.* The auditor of a county has no authority to release a school mortgage unless the money is paid, and where a party is entitled by his contract to an unincumbered title, he is not compelled to accept a conveyance of land thus encumbered, though the auditor has released the mortgage of record, 91 Ind. 413.

6. *Foreclosure.* A suit by the county auditor to foreclose the mortgage may be maintained instead of resorting to statutory proceedings, 23 Ind. 416; 101 Ind. 1, 532; 65 Ind. 262.

[1885, p. 195. Approved April 11, 1885, and in force July 18, 1885.]

Sec. 4383*a*. Collection on default. 4. It shall be the duty of the auditor of each county, in case default shall be or has been made in the payment of principal or interest of any school fund loan, to at once proceed to enforce the collection of such principal or interest, as the case may be; and any auditor who shall fail or refuse to comply with the requirements of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one thousand dollars. [El. Sup. § 1256.]

1. *Auditor's duty.* This section is properly supplemental to section 4383 (page 22), and the two should be read and interpreted together. In explanation of § 4383 the attorney general recently gave the following opinion: The statute (4383) provides that "On failure to pay any installment of interest when the same becomes due, the principal sum shall forthwith become due and payable, and the auditor may proceed to collect the same by suit on the note, or by sale of the mortgaged premises. He may also by suit recover the possession of the mortgaged premises before sale thereof, and he shall on the fourth Monday in March, annually, offer for sale all mortgaged lands on which payments of interest are due on the first day of January and unpaid on the day of sale." It

was intended that the county auditor should possess a speedy and summary remedy to enforce collection. If he was required to sell on the fourth Monday in March only, then in many instances the officer could not enforce collection for a year after the delinquency and defalcation. In many counties the officer has made sales under the statute at other times than the fourth Monday in March. In Cole *v.* Miller, 60 Ind. 463, the sale of the mortgaged land was made February 20, 1875, and the sale was sustained by the court. Every part of a statute should be so construed as to give it effect. It is my opinion, that on failure to pay any installment of interest when the same becomes due, the county auditor is authorized to sell the land at any time, after sufficient and proper notice. The duty imposed on him by statute, "to offer for sale on the fourth Monday in March, annually, all mortgaged lands on which payments of interest are due on the first day of January and unpaid on the day of sale," is intended to be mandatory. He may sell at any time after defalcation by the creditor, and lawful notice thereof, but must offer for sale on the fourth Monday in March, annually, all mortgaged lands on which payments of interest are due on the first day of January and unpaid on the day of sale.—*Hord, Atty. Gen.*

2. *Penalty.* By this section the county auditor is required, under penalty, to do what, according to the attorney-general's opinion, he was authorized to do by section 4383, namely, to enforce collection of principal or interest of loans whenever default shall be made in the payment thereof, not waiting for the fourth Monday of March. But section 4383 is in force as to the manner of procedure. The usual legal notice must of course be given.—*Holcombe, Supt.*

Sec. 4384. Fund to be specified. 88. The mortgage may be, in substance, as follows; and the auditor shall specify therein whether the same belongs to the common school fund or to the congressional township fund, and, if the latter, the particular township or townships whose funds are thus loaned.

Sec. 4385. Form of mortgage. 89. I, A. B., of the county of ———, in the State of Indiana, do mortgage to the State of Indiana, for the use of [here describe the fund out of which the loan was made], all [here describe the land], for the payment of ——— dollars, with interest at the rate of eight per cent. per annum, payable annually in advance, according to the conditions of the note hereto annexed.

1. *Description.* If it appears upon the face of the mortgage and the certificate of acknowledgment, that the mortgage was executed in this State, between residents thereof, the presumption, in the absence of anything in the instruments to the contrary, is, that the description was intended for lands in this State, 101 Ind. 1; 115 Ind. 529; 116 Ind. 383. A description as "The northeast part" of a specified tract, "containing, ninety acres," is insufficient and an auditor's sale thereon is void; but the mortgage may be corrected by a suit brought for that purpose and a decree of sale entered thereon; or the auditor may thereafter make a statutory sale thereof, 85 Ind. 512.

2. *Ownership.* A mortgagor is presumed to be the owner of the land mortgaged, until something to the contrary appears. The possession by the mortgagor, at the time of executing the mortgage, is *prima facie* sufficient to show that he was the owner. His title may be proved by parol, if such evidence is not objected to, 101 Ind. 1.

3. *Wife's signature.* In the form prescribed, there is no mention of relinquishment of a wife's inchoate interest. The wife, however, has an inchoate interest in the land held by the husband, and she should join him in signing the mortgage prescribed for securing loans from the school fund.—*Larrabee, Supt.* See 85 Ind. 512; 115 Ind. 529.

4. *Assignment to subsequent mortgagee.* Whenever a school fund mortgage becomes collectible on account of failure to pay interest or any other failure on

the part of the mortgagor, by which it becomes necessary to foreclose in order to recover the money, then such mortgage may be assigned to the holder of a subsequent mortgage upon payment of the amount due.—*Woollen, Atty. Gen.*

5. *Wife.* A wife may borrow money and mortgage her own land to discharge valid liens thereon, or for a purpose that enures to its benefit or protection, 115 Ind. 529.

Sec. 4386. Form of note. 90. The note accompanying the same may be in substance as follows, to wit: I, A. B., promise to pay to the State of Indiana, for the use of [here recite the particular fund], on or before———, the sum of——— dollars, with interest thereon at the rate of eight per cent. per annum in advance, commencing on the——— day of———, 18—; and do agree that, in case of failure to pay any installment of interest when the same shall become due, the principal sum shall become due and payable, together with all arrears of interest; and on failure to pay such principal or interest when due, two per cent. damages shall be collected, with costs, and the premises mortgaged may be sold by the county auditor for the payment of such principal sum, interest, damages, and costs.

The fact that the fund is not described in the note, nor that it is not signed, will not render it void; but taken in connection with the mortgage it is a valid obligation, 82 Ind. 558.

Sec. 4387. Warrant to borrower. 91. On making loan of any fund, the auditor shall draw his warrant in favor of the borrower upon the county treasurer, who shall charge it to the proper fund.

Sec. 4388. Payments—Quietus. 92. All loans refunded and all interest shall be paid to the county treasurer, and his receipt shall be filed with the county auditor, who shall give the payer a quietus therefor, and make proper entries.

1. The auditor is bound to take notice of a payment to the treasurer, whether or not receipt has been filed with him, 29 Ind. 1.

2. *Payment.* Payment should be made to the county treasurer and not to the county auditor, 60 Ind. 463.

Sec. 4389. Indorsements and satisfaction. 93. Whenever the amount due on any mortgage shall be paid, and the treasurer's receipt therefor filed, the auditor shall indorse on the note and mortgage that the same has been fully satisfied, and surrender the same to the person entitled thereto; and, on production of the same thus indorsed, the recorder shall enter satisfaction upon the record.

County recorder's entry. The county recorder can enter satisfaction of a school fund mortgage before foreclosure, only upon an indorsement by the county auditor that the same has been fully paid, 101 Ind. 1.

Sec. 4390. Suit for deficiency. 94. In all cases when the mortgaged premises shall fail to sell for a sum sufficient to satisfy the principal and interest of the loan made, and the damages accrued by reason of such failure, and costs, the county auditor shall bring

suit on the notes executed by the mortgagor; and whenever judgment shall be rendered thereon, no appraisement of property shall be allowed on execution issued on such judgment.

1. *The relator.* The county auditor is the proper relator in a suit to recover school funds loaned, 51 Ind. 52.

2. *Damages.* See § 4347, *note* 2.

3. *Appraisement.* The land should be ordered sold without appraisement.

4. *Suit for deficiency.* No suit for a deficiency can be maintained until there has been a sale under § 4393, and a failure to realize enough to satisfy the amount due, 109 Ind. 388. The fact that the county has reimbursed the State on account of the deficiency does not defeat the suit.

Sec. 4391. Notice of sales. 95. Before sale of mortgaged premises, the auditor shall advertise the same in some newspaper printed in the county where the land lies, if any there be (otherwise, in a paper in the State nearest thereto), for three weeks successively, and, also, by notice set up at the court-house door and at three public places in the township where the land lies.

1. *Length of notice.* The legislature may change the requisite length of notice even after the mortgage has been given, 26 Ind. 450.

2. *No compensation.* The auditor is not entitled to compensation for posting notices of sale, 63 Ind. 492.

3. *Diligence.* If any one seeks to avoid a sale for want of notice, he must proceed with due diligence therein, 77 Ind. 486.

Sec. 4392. Manner of sale—Surplus. 96. At such sale (which shall be held at the court-house door), the auditor shall sell so much of the mortgaged premises to the highest bidder, for cash, as will pay the amount due for principal, interest, damages, and costs. When less than the whole tract mortgaged shall be sold, the quantity sold shall be taken in a square form, as nearly as possible, off the northwesterly corner of said tract; and when less than the whole of any in-lot or out-lot of any town or city shall be sold, the part sold shall be laid out and taken off, so that it shall extend from the main or principal street or alley on which the said lot fronts, to the rear thereof, to divide the same by a line as nearly parallel with the boundaries of said lot as practicable; and if less than the whole is sold, the auditor, in his notice of sale, shall indicate off of which side or end of said lot the part to be sold shall be taken; and if more than one tract of land is included in the mortgaged premises, the auditor shall elect which tract or tracts shall be sold, saving to the mortgagor, if practicable, the tract on which his house is located. If a tract of land so mortgaged, and liable to be sold to satisfy the mortgage, can not be divided without materially diminishing the value of such tract; or if any in-lot or out-lot be indivisible, by reason of extensive buildings or other improvements thereon, the auditor may sell the whole thereof, and, after paying the amount due for principal, interest, damages, and costs out of the purchase-money, shall pay

the balance, if any, to the mortgagor; and if the auditor sell any part of a tract of land, out-lot, or in-lot for more than the amount of principal, interest, damages, and costs, the excess, if any, shall be paid to the mortgagor.

1. *Division immaterial.* The auditor can sell in no other way than that provided by law, 25 Ind. 4. But in a suit to set aside a sale made by the auditor, where the mortgage debt, penalty and costs aggregated one hundred and fifty-two dollars and twenty cents, though the land was worth four thousand dollars, and could have been divided without materially diminishing its value, it was held to be immaterial that he did not, at the sale, offer any part in the form of a square or otherwise off of the northwest corner thereof, 58 Ind. 543.

2. *The excess.* If the mortgagor has sold the land to another person, and the purchaser has assumed the mortgage, such purchaser would be subrogated to the mortgagor and entitled to receive the excess.—*Baldwin, Atty. Gen.*

3. *Tax sale.* The lien of the State upon land mortgaged to the school fund is not affected by a sale of the land for taxes, and the State need not redeem to save its rights. The purchaser at the tax sale takes title subject to the school fund mortgage.—*Woollen, Atty. Gen.* See § 4380, *note* 1, and § 6446, *note* 3.

4. *Claimant must show regularity.* If in making sale of lands for non-payment of interest upon a loan of school funds the auditor fails to obey strictly the requirements of the statute, the sale is void, and the party claiming title through the sale has the burden of showing such strict compliance, 93 Ind. 401; 118 Ind. 184.

5. *Power of auditor.* The auditor has no power to sell in any other mode than that precribed by the statute, 118 Ind. 184.

6. *Sale of less than whole tract* In selling less than the whole tract mortgaged, the auditor must take the amount sold out of the northwest corner of the tract; and if he do not, the sale will be invalid, 118 Ind. 184.

7. *Auditor's offer.* It is the duty of the auditor to offer the mortgaged premises in the manner provided by the statute; and, if, after offering it for sale in that manner, no one bids the amount due, he must bid the property in for the use of the fund secured by the mortgage, 118 Ind. 184.

8. *Sale for more than due.* A sale for the payment of a greater sum than is actually due is void, 29 Ind. 1; 21 Ind. 421. And this is true even though the mortgagor has failed to file the treasurer's receipt with the county auditor, as required by statute, 29 Ind. p. 9. Thus a sale for $21.00 more than was due was held void, 29 Ind. 1; and so for $30.00, 21 Ind. 421. The payment of interest on the mortgage is a valid credit, 29 Ind. 1.

9. *Subrogation.* The purchaser of land sold under a school fund mortgage may be subrogated to the rights of the State in the mortgage, if the sale has been set aside as invalid, and the fact that there was a mistaken description in the mortgage, if the mistake be such as can be corrected at the suit of the State, does not affect the right of subrogation on the part of the purchaser at the sale under the mortgage, upon the sale being set aside as invalid, 82 Ind. 471.

10. *Description made good by reference.* A defective description in a mortgage is made good by a reference to another mortgage or a deed which contains a true description, 82 Ind. 471.

11. *Sale of several tracts.* If there are several tracts mortgaged, they can not be offered at once and together until after an effort is made to sell them separately; and so much only can be sold as will pay the amount due for principal, interest, damages and costs, 93 Ind p. 410. But if the land is described in the mortgage as a single tract, the auditor is not required to offer it in specific parcels, 106 Ind. 589.

12. *Quieting title—Tender.* One whose land has been sold to satisfy a school fund mortgage executed by him, can not maintain an action to quiet title against the purchaser, although the sale was void, without first paying or tendering to the latter the amount paid by him, 106 Ind. 589.

13. *Merger.* If a school fund mortgage has been foreclosed, no sale can

be made under the statute; for the effect of the judgment of foreclosure is to merge the mortgage in it, and extinguish the mortgage, 65 Ind. 262.

[1889, p. 314. Approved and in force March 9, 1889.]

Sec. 4393. Auditor's bid. 97. In case of no bid for the amount due, the auditor shall bid in the same on account of the fund, and, as soon thereafter as may be, shall sell the same, having first caused it to be appraised by three disinterested freeholders of the neighborhood, upon the following terms, viz.: One-third cash in hand, and the balance in four equal installments due in one, two, three and four years respectively from the day of sale, bearing interest at six per cent. per annum, payable annually in advance; but no such sale shall be for a less sum than the appraised value thereof. [El. Sup. § 1259.]

1. *More than one appraisement.* If the appraisement is found to be too high, the auditor may have a re-appraisement made, and sell the property under the modified valuation. Any other construction might work irreparable damage to the fund, as property might never sell for the amount of the first appraisement, and might thus become a worthless investment.—*Woollen, Atty. Gen.*

2. *Credit.* The sale can be made only on credit, as specified in this section; it can not be made for *cash*, 65 Ind. 262.

3. *Suit for deficiency.* A suit for a deficiency can not be maintained until there is a sale of the land, 109 Ind. 388.

4. *County entitled to the property bid in.* Where the county auditor bids in the land it belongs to the county; and the school fund is only entitled to the principal of said loan and the interest thereon until after the county treasurer is reimbursed because of the interest it has paid to the said fund on account of said loan, 122 Ind. 333.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4394. Sale of lands bid in. 98. Lands heretofore bought in on account of the fund, which have been appraised, shall be sold in like manner; and if, upon sale of any such land, a sum is realized which is more than sufficient to pay the principal, interest, damages and costs, the overplus shall be paid to the original mortgagor, his heirs or assigns, when collected.

Compare § 4347. The provisions in this section in reference to the demands for which the mortgaged land shall be sold to satisfy, applies to the preceding section, 122 Ind. 333.

Sec. 4395. Deed by auditor. 99. Upon full payment being made for such lands, the deed therefor shall be executed by the county auditor, and shall be entered in the record of the board of county commissioners before delivery.

1. *Record of deed.* A recording of the deed in the commissioner's record is a condition precedent to its delivery, and a necessary step in the sale, 58 Ind. 543.

2. *The deed as evidence.* It is the deed alone that vests the title in the purchaser, and if the deed does not state that the proper steps have been taken to perfect a sale it is no evidence that those steps have been taken, 7 Blkf. 12.

3. *Tender of deed.* A suit for the purchase-money can not be made without tender of a deed for the property, recorded as required above, not absolute but conditional upon payment therefor, 74 Ind. 588.

Sec. 4396. Statement of sales. 100. At the public sale at the court-house door provided for in this act, the county treasurer shall also attend, and make a statement of such sales, which shall be signed by the auditor and treasurer, and, after being recorded in the auditor's office, shall be filed in the treasurer's office; and such record, or a copy thereof, authenticated by the auditor's or treasurer's certificate, shall be received as evidence of the matters contained therein.

This statement must be signed by both auditor and treasurer, or the sale will be void, 58 Ind. 543; 93 Ind. p. 408.

Sec. 4397. Title in State without deed. 101. When any land is laid [bid] off by the auditor at such sale, no deed need be made therefor to the State; but the statement of such sale, and the record thereof, shall vest the title in the State, for the use of the proper fund.

Sec. 4398. Annual report. 102. County auditors and county treasurers shall annually report, in writing, to the boards of county commissioners of the respective counties, at the June sessions of said boards, relative to the school-fund held in trust by said counties, distinguishing, in said reports, between the congressional township and common-school funds; indicating the amount thereof; the additions to them within the current year then ending; the sources from whence such additions are derived; the condition of them as to their safety, giving the amount thereof safely invested, unsafely invested and uninvested, and loss, at the date of said reports; giving also the amount of interest collected upon said funds within the year then ending, and the amount then due and unpaid.

See § 4404.

Sec. 4399. Duty of boards. 104. The boards of county commissioners shall, annually, at their June sessions, in the presence of the auditors and treasurers, examine said reports, the accounts, and proceedings of said officers in relation to said funds, and the revenue derived from them. They shall compare with said reports, the cash, the notes, mortgages, records, and books of said officers, with a view to ascertain the amount of said funds and their safety; and do whatever may be necessary to secure their preservation and the prompt payment of the annual interest thereon as the same becomes due; and make up to said funds losses which have accrued or may accrue.

Lost funds. If any of the school fund, principal or interest, is lost, the superintendent of public instruction may direct the proper prosecuting attorney to institute suit against the county for its recovery, § 4413. If suit is not brought within one year after cause of action has accrued, the attorney-general may bring it, Acts 1889, p. 124, § 9; El. Sup. § 1805. The prosecuting attorney is not authorized to bring suit at his own instance, R. S. 1881, § 5864, See also § 4326, *note* 2.

Sec. 4400. Board's report. 105. Each board of county commissioners, at said session, shall make out a report, in writing, of the result of such examination, showing—

First. The amounts of said funds at the close of last year.

Second. The amount added from sale of land within the year.

Third. The number of acres of unsold congressional township school lands, and the approximate value thereof.

Fourth. The amount added from fines and forfeitures.

Fifth. The amount added by the commissioners of the sinking fund.

Sixth. The amount added from all other sources.

Seventh. The total amount of the funds.

Eighth. The amount refunded within the year.

Ninth. The amount re-loaned within the year.

Tenth. The amount safely invested.

Eleventh. The amount unsafely invested.

Twelfth. The amount uninvested.

Thirteenth. The amount of fund lost since 1842.

Fourteenth. The amount of interest collected within the year.

Fifteenth. The amount of interest delinquent.

And in such report, said board shall distinguish between the congressional township fund and the common school fund; and in its account of the interest or revenue derived from said funds, it shall observe the same distinction.

Unsafe investments. Commissioners are not justified in reporting money as safely invested, on the ground that the county is liable for the funds entrusted to it, and therefore the State can suffer no loss. If any money has been loaned on personal security it should be reported as unsafely invested, such loans being contrary to law. § 4370, *note* 2.

Sec. 4401. Disposition of report. 106. Such report shall be entered on the records of said board; and copies thereof, signed by the members of the board, the auditor, and treasurer, shall be transmitted to the auditor of state and the superintendent of public instruction.

Sec. 4402. Apportionment of loans. 152. Where the whole of the school funds of a county have been loaned, the auditor shall apportion to each congressional township a sufficient number of mortgages to cover the principal of its congressional township fund; and where a part of the school funds only are loaned, the auditor shall so apply a proportional amount; and the cash on hand, when loaned, shall be for the benefit of the congressional townships, respectively, to the amount of the entire principal of its congressional township fund; and in all loans made after the taking effect of this act, the note and mortgage shall specify the particular fund borrowed.

This section prescribes the manner of carrying out the provisions of § 4327, and should have been placed after it in the Revised Statutes. If in any instance its provisions have not been complied with, it is still in force and must be obeyed.

[1879, p. 102. Approved and in force March 29, 1879.]

Sec. 4403. Miscellaneous school fund account. 1. It shall be the duty of the auditor in each county to open an account with the congressional township school fund, to be styled the "Miscellaneous School Fund Account." He shall transfer to said account, from each township account, all sums on hand at any time when a loan is solicited (provided the aggregate sums will equal the amount sought to be borrowed), and may lend such combined sums in one loan; which loan shall be numbered in consecutive order, and the securities shall each and all be indorsed with the number as "Miscellaneous Loan No. —," as the number may be; and he shall enter in the miscellaneous account, on the debit side, separately, the sums taken from the account of the several townships, so as to show the corresponding number of the loan, and credit the several township accounts with the same sum and the like number of loan. Thence on, as interest accrues and is paid in on such loan, he shall debit the several township accounts with the *pro rata* portion of such interest accruing to each; and when such loan is paid, he shall distribute back to the township accounts the several sums originally transferred from each, and debit the miscellaneous account accordingly, and balance and close said account as to said loan. In all the entries throughout, he shall keep each entry identified by the proper number belonging to that loan, and so of each combined miscellaneous loan, as contemplated in this act.

Sec. 4404. Distribution and report. 2. In all cases where distribution is made of the school funds under the law now in force, it shall include all money on hand, or which, according to law, should be on hand, not exceeding the interest on loans for one year, which shall be distributed in full, and no portion shall be omitted or retained; and the report made by the auditor shall show fully the amount actually on hand, as required and contemplated by law, and show the distribution of the same in full.

Sec. 4405. Penalty against auditor. 3. If any auditor fail or refuse to so distribute and report such fund in full, as required by this act, he shall be liable to an action on his official bond. The superintendent of public instruction shall direct that action be brought upon the official bond of such defaulting auditor, and the prosecuting attorney of the proper county shall bring such action. On finding against such auditor, judgment shall be entered for the sum so omitted by him to be distributed, with damages of twenty per centum thereon, which shall be for the use and benefit of the fund so omitted to be distributed.

ARTICLE 2—ADMINISTRATION.

SEC.
4406. Election and term of superintendent of public instruction.
4407. Commencement of term—Oath.
4408. Duties—Office—Clerks, and their pay.
4409. Report to governor.
4410. Report to general assembly.
4411. Duties.
4412. Traveling expenses.
4413. Supervision of school funds.
4414. May require reports.
4415. Blanks and forms.
4416. Forms of book-keeping.
4417. Shall publish school laws.
4418. Journals, etc., to libraries.
4419. Salary—Pay of two clerks.
4420. Indiana state board of education.
4421. Duties and powers.
4421*a*. Traffic in question.
4422. State teachers' certificates.
4423. Pay and mileage of board.
4424. County superintendent.
4425. Shall examine teachers.
4426. May revoke licenses.
4427. Examinations—License.
4428. Record-book—Report to state superintendent.
4429. General duties.
4430. When must enumerate.
4431. Annual reports.
4432. Apportionment—Report.
4433. Compensation.
4434. Duty as to apportionment.
4435. Duty as to school funds.
4436. County board of education.
SEC.
4437. School township.
4438. Towns and cities.
4438*a*. Power to incur debt.
4438*b*. Petition to incur debt.
4438*c*. Notice of days for business.
4439. School trustees in cities and towns.
4440. Trustees' bonds—Vacancy.
4440*a*. County commissioners fill vacancy.
4441. Duty of school trustee.
4442. Record—Duty as to revenue.
4443. Annual statement.
4444. General duties.
4445. Superintendent in cities and towns.
4446. Joint graded-schools.
4447. Surplus—Special school revenue in cities and towns.
4448. Things legalized.
4449. Teachers' reports.
4450. Trustees' report to county superintendent.
4451. Failure to report.
4452. Neglecting duties.
4453. Failing to serve.
4454. Trustee's accounts.
4455. Examination of trustee and his books.
4456. Collection of accounts—Removal.
4457. School commissioners.
4458. School districts.
4459. Organization—Term—Vacancies.
4460. Duties and powers.
4461. Tax—Collection and payment.
4462. Sessions—Record—No pay.
4463. General school law in force.
4464. Temporary loans.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4406. Superintendent of public instruction. 119. There shall be elected by the qualified voters of the State, at a general election, a State superintendent of public instruction, who shall hold his office for two years.

1. *Term.* The State superintendency being a constitutional office, the length of the term can not be changed by legislation, § 189.

2. *The office.* The time will come when your superintendent may be deemed respectable in the eyes of your general assembly, and when they will place him on an equal footing in every respect with your other state officers.—*Fletcher, Supt.*

The tragic and untimely death of the talented Fletcher, cut off in the midst of his usefulness, a public servant worthy to be compared with any of the distinguished superintendents whose labors, aided by the great development of common school interests, have brought about the verification of his prediction in the increased dignity, power, and influence of the office he held for too short a time.

SEC. 4407. Commencement of term—Oath. 120. His official term shall commence on the fifteenth day of March succeeding his election. He shall take and subscribe the oath prescribed by law; which proceeding shall in all things conform to the law relative to the oaths of public officers.

1. *Oath of office.* Every officer under the constitution must take such an oath before entering upon his duties, § 226.

SEC. 4408. Duties—Office—Clerks. 121. The superintendent shall be charged with the administration of the system of public instruction and a general superintendence of the business relating to

the common schools of the State, and of the school funds and school revenues set apart and appropriated for their support. A suitable office shall be furnished for him, at the seat of government, in which the books, papers, and effects relating to the business of said office shall be kept; and there he shall give reasonable attendance to the business and duties of the office. He shall render an opinion, in writing, to any school officer asking the same, touching the administration or construction of the school law. He is hereby authorized to employ two clerks for said office, to be paid as the clerks of the office of the auditor of state are paid; and the sum of eighteen hundred dollars is hereby annually appropriated for that purpose.

1. *Legislature's duty.* It is the duty of the general assembly to prescribe the general duties of the state superintendent, and to provide suitable compensation for him, § 189.

2. *Opinions.* He is not bound to give opinions except to school officers—that is, county auditors, county treasurers and superintendents, township trustees, school directors, and school trustees of towns and cities. But the courtesy of superintendents has established the custom of answering questions touching the construction and administration of the school laws, for all who need such information.

3. *His opinions not a defense.* For it has been held that depositing funds in a solvent bank, by advice of state and county superintendents and county board, if loss result, is no defense to the trustee depositing, 61 Ind. 212.

Sec. 4409. Report to governor. 122. In the month of January in each year in which there is no regular session of the general assembly, he shall make a brief report, in writing, to the governor, indicating, in general terms, the enumeration of the children of the State for common school purposes, the additions to the permanent school fund within the year, the amount of school revenue collected within the year, and the amounts apportioned and distributed to the schools.

Sec. 4410. Report to general assembly. 123. At each regular session of the general assembly, on or before the fifteenth day of January, said superintendent shall present a biennial report of his administration of the system of public instruction, in which he shall furnish a brief exhibit—

First. Of his labors, the results of his experience and observation as to the operation of said system, and suggest the remedy for observed imperfections.

Second. Of the amount of the permanent school funds, and their general condition as to safety of manner of investment; the amount of revenue annually derived therefrom, and from other sources; estimates for the following two years; and the estimated value of all other property set apart or appropriated for school purposes.

Third. Of such plans as he may have matured for the better organization of the schools, and for the increase, safe investment, and better preservation and management of the permanent school

funds, and for the increase and more economical expenditure of the revenue for tuition.

Fourth. He shall present a comparison of the results of the year then closing with those of the year next preceding, and, if deemed expedient, of years preceding that, so as to indicate the progress made in the business of public instruction.

Fifth. He shall furnish such other information relative to the system of public instruction—the schools, their permanent funds, annual revenues, etc.—as he may think to be of interest to the general assembly.

He shall append to said report statistical tables, compiled from the materials transmitted to his office by the proper officers, with proper summaries, averages and totals appended thereto. He shall append a statement of the semi-annual collections of school revenue, and his apportionment thereof; and, when he deems it of sufficient interest to do so, he shall append extracts from the correspondence of school officers, tending to show either the salutary or defective operation of the system or of any of its parts; and shall cause ten thousand copies to be printed and distributed to the several counties of the State.

Sec. 4411. Duties. 124. He shall visit each county in the State at least once during his term of office, and examine the auditor's books and records relative to the school funds and revenues, with a view to ascertain the amount and the safety and preservation of said funds and revenues; and, for that purpose, he shall have access to, and full power to require for inspection the use of the books and papers of the auditor's office. Whenever he may discover that any of the school funds are unsafely invested and unproductive of school revenue, or that any of the school revenues have been diverted from their proper objects, he shall report the same to the general assembly. He shall meet with such school officers as may attend his appointment, counseling with the teachers, and lecturing upon topics calculated to subserve the interests of popular education.

1. *Visits.* The superintendent should hold himself in readiness to attend teachers' institutes whenever called upon. But it must be remembered that there are ninety-two counties in the State, and that with so many labors to perform in the office it will be impossible to spend much time in each county. Every teacher of our public schools is required to meet him at the time of such visitations, and the time lost in such cases shall not have to be made up by the teacher.—*Fletcher, Supt.*

Sec. 4412. Traveling expenses. 125. He shall receive, for traveling and other expenses while traveling on the business of the department, a sum not exceeding six hundred dollars per annum; and an appropriation of that amount is hereby made for that purpose, annually.

Sec. 4413. Supervision of school funds. 126. He shall exercise such supervision over the school funds and revenues as may be

necessary to ascertain their safety and secure their preservation and application to the proper object; and cause to be instituted, in the name of the State of Indiana, for the use of the proper fund or revenue, all suits necessary for the recovery of any portion of said funds or revenues. It is hereby made the duty of the proper circuit prosecuting attorney to prosecute all such suits at the instance of the superintendent, and without charge against said funds or revenue.

1. See § 4400, *note* 1.

2. *May employ attorney.* This section and R. S. 1881, § 5611, authorize the state superintendent and auditor of state to employ an attorney to collect a claim due the school fund, and their contract in this behalf is the contract of the State, 76 Ind. 328.

Sec. 4414. May require reports. 127. He may require of the county auditors, county superintendents, county treasurers, trustees, clerks, and treasurers, copies of all reports required to be made by them, and all such other information in relation to the duties of their respective offices, so far as they relate to the condition of the school funds, revenues, and property of the common schools and the condition and management of such schools, as he may deem important.

Sec. 4415. Blanks and forms. 128. He may prepare, and transmit to the proper officers, suitable forms and regulations for making all reports, and the necessary blanks therefor, and all necessary instructions for the better organization and government of common schools, and conducting all necessary proceedings under this act.

Sec. 4416. Forms of book-keeping. 102. Forms and modes of book-keeping shall, from time to time, be prescribed for county auditors and county treasurers by the state superintendent of public instruction.

Sec. 4417. Shall publish school laws. 129. He shall cause as many copies of the acts of the general assembly in relation to the common schools or the school funds, with necessary forms, instructions, and regulations, to be from time to time printed, and distributed among the school townships, as he shall deem the public good requires.

Sec. 4418. Journals, etc., to libraries. 130. He shall supply each common school library with the legislative and documentary journals, and the acts of each session of the general assembly, and his own annual reports. At the expiration of his term of office, he shall deliver to his successor possession of the office, and all books, records, documents, papers, and other articles pertaining or belonging to his office.

[1879 S., p. 131. Approved March 31, 1879, and in force May 31, 1879.]

Sec. 4419. Salary—Pay of two clerks. 11. The salary of the superintendent of public instruction shall be twenty-five hundred

dollars per year. The salaries of the two clerks of the superintendent of public instruction shall be nine hundred dollars each per year.

[1875, p. 130. Approved February 25, 1875, and in force August 24, 1875.]

SEC. 4420. State board of education. 153. The governor of the State, the state superintendent of public instruction, the president of the State University, the president of Purdue University, the president of the State Normal School, and superintendents of common schools of the three largest cities in the State, shall constitute a board, to be denominated the Indiana State Board of Education. The size of the cities shall, for this purpose, be determined by the enumeration of children for school purposes, annually reported by county superintendents to the superintendent of public instruction. The superintendent of public instruction shall, *ex officio*, be president of the board; and in his absence the members present shall elect a president *pro tempore*. The board shall elect one of its members secretary and treasurer, who shall have the custody of its records, papers, and effects, and shall keep minutes of its proceedings: *Provided*, That such records, papers, effects, and minutes shall be kept at the office of the superintendent, and shall be open for his inspection. The said board shall meet, upon the call of the president or a majority of its members, at such place in the State as may be designated in the call; and shall devise, adopt, and procure a seal, on the face of which shall be the words, "Indiana State Board of Education," and such other device or motto as the board may direct—an impression and written description of which shall be recorded on the minutes of the board and filed in the office of the secretary of state; which seal shall be used for the authentication of the acts of the board and the important acts of the superintendent of public instruction.

When first created in 1852 the board consisted of the superintendent of public instruction and the governor, secretary, treasurer and auditor of state. In 1855 the attorney-general was added. It remained merely a board of state officers, but little interested in or conversant with educational affairs, and exerting no appreciable influence, till 1865, when the membership was constituted as at present, except the president of Purdue University, who was added in 1875. The cities represented have always been Indianapolis, Evansville, and Fort Wayne. As a board of professional educators, independent of politics, it has been a valuable agent in our educational progress.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4421. Duties and powers. 154. Said board, at its meetings, shall perform such duties as are prescribed by law, and may make and adopt such rules, by-laws, and regulations as may be necessary for its own government, and for the complete carrying into effect the provisions of the next section of this act, and not in conflict with the laws of the State; and shall take cognizance of such questions as may arise in the practical administration of the school system not otherwise provided for, and duly consider, discuss, and determine the same.

1. *Examination questions.* By virtue of the considerable power conferred by the authorization to take cognizance of matters not otherwise provided for, the board prepares questions for the examination of teachers, and prescribes the time and manner of their use by the county superintendents. This work received legislative recognition in 1883 by the enactment of the next section.

2. *County superintendent.* It is the duty of the county superintendent to carry out the instructions of the state board and state superintendent, § 4429.

3. The state board appoints the trustees of the Indiana University. R. S. 1881, § 4525.

[1883, p. 81. Approved March 3, 1883, and in force June 5, 1883.]

SEC. 4421*a*. Traffic in questions. 1. Whosoever shall sell, barter, or give away to applicants for license, or to any other person, the questions prepared by the state board of education, to be used by county superintendents in the examination of teachers, or in any way dispose of said questions contrary to the rules prescribed by said state board of education, shall be deemed guilty of a misdemeanor; and on conviction, shall be fined in any sum not less than ten, nor more than two hundred dollars. [El. Sup. § 339.]

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4422. State certificates. 155. Said board may grant state certificates of qualification to such teachers as may, upon a thorough and critical examination, be found to possess eminent scholarship and professional ability, and shall furnish satisfactory evidence of good moral character. They shall hold stated meetings, at which they shall examine all applicants, and those found to possess the qualifications herein above named shall receive such certificate, signed by the president of the board, and impressed with the seal thereof; and the said certificate shall entitle the holder to teach in any of the schools of the State without further examination, and shall also be valid during the life-time of said holder, unless revoked by said board. Each applicant for examination shall, on making application, pay to the treasurer of the board five dollars as a fee.

1. *Requirements.* It is ordered that there shall be but one grade of state certificates of qualifications for teachers; and that these shall be granted to applicants who shall present satisfactory evidence of good moral character and of forty-eight months' successful experience in teaching (of which at least sixteen shall have been in Indiana), and shall pass a satisfactory examination in orthography, reading, writing, arithmetic, geography, physical geography, English grammar, physiology, history and constitution of the United States, general history, plane geometry, algebra, elements of physics, elements of zoology, elements of botany, English and American literature, rhetoric, moral science, and the science of teaching. Provided, that any person holding a valid "professional license" [§ 4425, *note* 9] shall be granted a state certificate on passing a satisfactory examination in plane geometry, elements of zoology, English and American literature, moral science, the science of teaching, general history, and rhetoric. Examinations for state certificates shall be held from time to time, as the number of applicants may require.—*Order of State Board, Nov.* 1, 1883.

2. *Professional licenses.* The state board of education is further empowered, by an act in force June 10, 1883, to prescribe what shall be the nature and extent of the examination for an eight-years' license, and such license shall issue only upon the approval of the board, § 4425, *note* 9.

[1873, p. 68. Approved and in force March 8, 1873.]

SEC. 4423. Pay and mileage of board. 156. The members of said board, other than the governor and state superintendent of public instruction, shall be entitled to receive for their services, while actually engaged in the duties of their office, five dollars per day and five cents per mile necessarily traveled while so engaged; which amount shall be certified by the board to the auditor of the state, who shall draw his warrant therefor, payable out of the general fund, which sum shall be reimbursed to the general fund by the treasurer of the board paying into it that amount out of the money received by him as fees for certificates; and if there be any residue of money received as such fees, it shall be expended by the superintendent of public instruction in the purchase of suitable books for an office library. Said board shall be allowed the necessary expenses incurred in the discharge of the duties required of the same, for clerk hire, postage, etc.; which expenses shall be paid as the expenses of the members of the board are paid.

Appropriations. The requirement that the auditor of state shall, upon the certificate of the board, draw his warrant on the general fund for the expenses specified, amounts to a continuing appropriation therefor, which, however, is temporarily suspended when an appropriation is made therefor in the biennial appropriation bill.—*Hord, Atty. Gen.*

[1873, p. 75. Approved and in force March 8, 1873.]

SEC. 4424. County superintendent. 33. The township trustees of the several townships of each county shall meet at the office of the county auditor of such county, on the first Monday of June, 1873, and biennally thereafter, and appoint a county superintendent, who shall be a citizen of such county, whose official term shall expire as soon as his successor is appointed and qualified; who, before entering upon the duties of his office, shall take and subscribe an oath that he will faithfully perform his duties as such officer according to law, which oath shall be filed with the county auditor. He shall execute a bond, with freehold surety to the approval of the county auditor, payable to the State of Indiana, in the penal sum of one thousand dollars, conditioned that he will faithfully discharge his duties according to law, and faithfully account for and pay over to the proper persons all moneys which may come into his hands by reason of such office; and, thereupon, the county auditor shall report the name and post-office address of the person appointed to the superintendent of public instruction: *Provided, however,* That the board of county commissioners shall have power to dismiss any county superintendent for immorality, incompetency, or general neglect of duty, or for acting as agent for the sale of any text-book, school furniture, or maps; but no county superintendent shall be dismissed without giving him written notice, under the hand and seal of the auditor, ten days before the first day of the term of the court of commissioners at which the cause is to be heard; and the said notice shall state the charges

preferred against the superintendent, the character of the instrument in which they are preferred (whether a petition, complaint, or other writing), and the names of those preferring the same. The duties required of the school examiner by any act shall hereafter be performed by the county superintendent. Whenever a vacancy shall occur in the office of county superintendent, by death, resignation, or removal, the said trustees, on the notice of the county auditor, shall assemble at the office of such auditor, and fill such vacancy for the unexpired portion of the term, in the manner herein provided; and the county auditor shall be clerk of such election in all cases, and give the casting vote in case of a tie, and shall keep the record of such election in a book to be kept for that purpose.

1. *Amendment void.* The act of March 9, 1875, attempting to amend this section, and §§ 4427, 4429 and 4433, is unconstitutional and void, 52 Ind. 420; 67 Ind. 71.

2. *Quorum for appointment.* A majority of all the township trustees of the county is a quorum for the appointment of a superintendent, but the person appointed must receive the votes of a majority of all such trustees present and voting, 125 Ind. 65; and the county auditor can not be counted in determining whether or not a quorum is present, 113 Ind. 79.

3. *Meeting of trustees.* The trustees meet for a regular appointment by command of the statute, not by virtue of the auditor's call, but it is proper for the auditor to notify them of the time of the meeting. On the occurrence of a vacancy the auditor notifies the trustees of the fact, and fixes the day for them to assemble to fill it.—*Holcombe, Supt.* The trustees having failed to appoint a superintendent on the day fixed by law, adjourned *sine die*, and afterward, on call of the auditor, met and made an appointment; but such action was invalid and of no effect, 67 Ind. 71. But had the trustees adjourned from day to day, an appointment made at such adjourned meeting would probably have been valid; and, possibly, after adjournment *sine die*, a mandamus might have issued to compel a re-assembling to perform the omitted duty, 74 Ind. 487.

4. *Mode of election.* The auditor has a right to act as the clerk of the board of election, keep a record of the same, and give the casting vote in case of a tie. The trustees have the right of controlling the manner of the election. The auditor's declaring a person elected does not amount to anything; he has no right to make such declaration. It is the duty of the board of trustees to do that, and until they finally settle the matter a member has a right to vote. The appointment has very few elements of a popular election about it. The law simply provides that the township trustees shall appoint, and says nothing about the manner in which the appointment shall be made. Any mode that they may adopt by which they can arrive at the expression of the wish of the majority is sufficient to designate the person to be appointed, and there is nothing binding until there is a final determination of the subject by the trustees, 86 Ind. 118.

5. *Casting vote.* The county auditor is clerk of the election and gives the casting vote in case of a tie, in regular elections as well as in those held to fill vacancies.—*Holcombe, Supt.* A tie means that two opposing candidates have each an equal number of votes. An equal division on a motion to appoint a candidate to the office is not such a tie as entitles the auditor to vote.—*Baldwin, Atty. Gen.* See 114 Ind. 581.

6. *Who eligible.* To be eligible to the county superintendency a person must be a *bona fide* resident and elector of the county, § 154. He must have been an inhabitant of the county during one year preceding his appointment, but it is not essential that he should have been a citizen or elector for so long, 86 Ind. 118. Women are held to be ineligible, § 4540, *note* 1.

7. *Recognition by state superintendent.* It is made the duty of the county

auditor to report to the superintendent of public instruction the name and address of the person appointed. That is the means provided by law for informing the state superintendent, who has been appointed, and he has no power to decide upon the validity of an election on information furnished from other sources, evidence *aliunde*. That is a question for the courts.—*Holcombe, Supt.*

8. *Disputed election.* The qualifying of the appointee consists in the execution and acceptance of the required bond, and taking and subscribing the oath of office. A person who has received the certificate of appointment and taken the above action is county superintendent, at least *de facto*. If the validity of the appointment is disputed, the issues may be joined by an action to replevin [this is doubtful] the records and properties of the office, or by a writ of *quo warranto* against one of the claimants.—*Holcombe, Supt.*

9. *Appeal on dismissal.* An appeal lies to the circuit court from a decision of county commissioners dismissing a superintendent from office. While such appeal is pending the person dismissed can not act as superintendent, but a successor may be appointed, and will hold for the unexpired term, unless the person dismissed is reinstated by the court. See 64 Ind. 493, and 41 *id.* 357.—*Baldwin, Atty. Gen.* See also 49 Ind. 64.

10. *Election by ballot—Record—Evidence.* A county superintendent of schools, properly elected and qualified, will hold the office till his successor is elected and qualified. The record of such election made by the county auditor is *prima facie* correct, and is *prima facie* evidence of such election. When the township trustees agree that the election of superintendent shall be by secret ballot the election will be determined by the ballots actually cast; and in a suit regarding the validity of such an election, the ballots are the best evidence, but when they have been lost it is proper for the jury to consider the testimony of the trustees who cast the ballots, and of those who counted them and announced the result, 99 Ind. 300.

11. *Who elect.* It is my opinion that township trustees alone can vote in the election of a county superintendent, the county auditor, however, having the casting vote in case of a tie; and that presidents of city and town school boards can not participate in such election.—*Hord, Atty. Gen.*

12. *Office for county superintendent.* The county is not required to furnish the county superintendent with an office; nor are they liable for the rent of one he hires, 96 Ind. 384.

13. *Mandate to compel surrender of records.* Mandamus is the proper remedy to compel a retiring officer to turn over to his predecessor the records and furniture pertaining to the office, and it is not necessary to allege in the application that such successor is eligible to the office, as is the case in *quo warranto* to try title. And mandamus may thus be maintained without regard to whether the votes of a majority of all the school trustees are necessary to the valid appointment of a county superintendent, where such trustees recognize the appointment as valid, and the appointee qualifies and enters upon the duties of the office with the acquiescence of all others, 103 Ind. 444.

14. *Resignation—Withdrawal.* Where, without notice of the withdrawal of a resignation previously made, the time arrives for it to take effect, and a successor to the incumbent is duly appointed, no formal acceptance of such resignation is necessary to deprive such incumbent of title to the office, 103 Ind. 444.

15. *Regularity of appointment.* One can not contest the regularity of the appointment of a successor, who has become invested with an apparent title, by refusing to surrender the records of the office, 103 Ind. 444.

16. *Failure to object to illegal vote.* A failure to object to the casting of an illegal vote is not a waiver of the right to object to the legality of the election after the result is declared; nor can such apparent acquiescence be construed as either an implied or informal vote in favor of the officer who voted for himself, 116 Ind. 458.

17. *County auditor can not dictate the mode of election—Tie.* The county auditor can not dictate the manner or mode of conducting the election; and if he does the election will be void. Thus, the township trustees of a county met at the proper time and place, and took several ineffectual votes, and on the

last ballot one-half of the trustees voted for E., and the other half voted in blank. A resolution was then offered declaring that E. be appointed. The vote upon the adoption of the resolution was evenly divided for and against it. The county auditor thereupon gave a casting vote in favor of the resolution, and a certificate of election was issued to E. The election of E. was held void, because the trustees must determine, without dictation from the auditor, the manner in which the election of the superintendent must be held, and that the action of the auditor, in assuming to give a casting vote upon the adoption of the resolution, was unwarranted dictation. Nor did the vote upon the resolution proposed constitute a tie, authorizing the auditor to give the casting vote, and there could be no election under the resolution unless, a quorum of all the trustees being present, a majority of such trustees voted therefor, 114 Ind. 581. But where there were eight trustees in a county, and after meeting and effecting an organization (by the auditor illegally casting a vote), four voted for A. and the remaining four protested against his being declared elected; but A. was declared elected; the election was held valid, the court declaring that the four not voting did not vitiate the election, for A. received a majority of those "present and voting," 125 Ind. 65; see 121 Ind. 206.

18. *Trustee voting for himself.* A trustee can not legally vote for himself for the office of county superintendent; and if he does, the vote so cast can not be counted in determining the result of the election, 116 Ind. 458.

19. *Failure to give bond—Appeal.* The failure to give a bond within the time required (§ 3050*b*) does not necessarily work a forfeiture of the office; and if the board of commissioners, under § 4520*j* refuse to approve it, the superintendent may appeal from their decision, even though such board refuse to approve it on the ground that they have removed him from the office, 124 Ind. 145.

20. *Mandate.* Mandate lies to compel the proper officer to approve the bond tendered; and it can not be set up as a defense that the county superintendent was corruptly elected, 124 Ind. 554.

21. *Bond.* The county superintendent now gives two bonds. See § 4420*j*.

[1889, p. 85. Approved March 2, 1889, and in force May 10, 1889.]

SEC. 4425. Examination of teachers. 34. Said county superintendent shall examine all applicants for license as teachers for the common schools of the State by a series of written (or printed) questions, requiring answers in writing, and in addition to the said questions and answers in writing questions may be asked and answered orally, and if, from the ratio of correct answers and other evidences disclosed by the examination, the applicant is found to possess a knowledge which is sufficient, in the estimation of the county superintendent, to enable said applicant successfully to teach, in the common schools of the State, orthography, reading, writing, arithmetic, geography, English grammar, physiology and the history of the United States, and to govern such school; said county superintendent shall license said applicant for the term of six months, twelve months, twenty-four months, or thirty-six months, according to the ratio of correct answers and other evidences of qualifications given upon said examination, the standard of which shall be fixed by the county superintendent; and in examining persons for positions to teach in graded schools in cities and towns, the county superintendent may take into consideration the special fitness of such applicants to perform the services required of them, and shall make, on the licenses issued to such applicants, a statement of the kind of work for which they are

especially qualified; and all applicants, before being licensed, shall produce to the county superintendent the proper trustee's certificate or other satisfactory evidence of good moral character: *Provided*, That a six months' license shall be regarded as a trial license, and that no person who hereafter receives a six months' license in any county shall be again thereafter licensed in said county unless he obtains a grade which shall entitle him to receive at least a twelve months' license: *And provided*, That any person now possessing a twenty-four months' license whose next consecutive license shall be for the term of thirty-six months, or any person who shall hereafter receive two licenses in succession, each for thirty-six months, may receive, at the expiration of such several licenses, a license for the term of eight years, upon such an examination held by the county superintendent as may be prescribed by the state board of education, and such license shall issue only upon the approval of the state board of education, and shall be styled a professional license, and shall entitle the holder to teach in any of the schools in this State: *Provided, further*, That any person who has taught for six consecutive years in the common schools of this State and now holds a two [three] years' license to teach therein, or who, having previously taught for six consecutive years in said common schools, shall hereafter obtain a two [three] years' license to teach therein, shall be forever afterward exempt from examination so long as he or she shall teach in the common schools of the county in which said three years' license was obtained; but if such person shall at any time after said exemption accrues suffer a period of one year to pass without having taught one school year in the common schools of said county within said period, then said exemption shall cease; and if such person shall, during such exemption, seek employment to teach other or higher branches in the common schools of this State than those branches which were included in the examination upon which said three years' license was issued, then he or she shall be examined in such additional branches. [El. Sup. § 1276.]

1. This section supersedes the amended act of 1883 (Acts 1883, p. 130). The last proviso in the above section is ambiguous. The state superintendent of public instruction is of the opinion that the license therein mentioned as "a two years' license," and afterwards referred to as "said three years' license," was meant to be a three years' license.

2. *Evidence of character.* A superintendent may require evidence of good moral character before the examination commences, and if such evidence is not satisfactory, he may refuse to examine the applicant. This is not a wise thing to do, however, since, if the question of scholarship were settled, a license might afterward be issued on production of satisfactory evidence; or on an appeal to the superintendent of public instruction, the question of moral character alone would have to be considered.—*Smart, Supt.* No person who indulges in such immoral practices as profanity, drunkenness, gambling or licentiousness, should be licensed to teach.—*Hoss, Supt.*

3. *Loss of certificate, etc.* The certificate is only the evidence of a license. It follows that if a teacher loses his certificate he remains licensed, and should be so treated, provided he can prove the facts. In such cases a duplicate certificate may be issued from the superintendent's record. The failure of an appli-

cant upon examination does not affect a license previously issued to such applicant, or afford ground for its revocation.—*Smart, Supt.*

4. *Special fitness.* No person shall be admitted to the benefits of the provision that "special fitness" shall be considered in the examination of teachers for the graded schools of cities and towns, except on a presentation of a written request of a town or city school board, with a statement that said board desires to employ said applicant for a certain grade of work named or described, and the expediency of complying with such request shall be left to the discretion of the county superintendent.—*Resolution of County Superintendents' Association*, 1883.

5. *Special licenses.* A county superintendent may, upon request of the school board of a town or city, examine a candidate for the position of teacher of German in the graded schools of such town or city, in such a manner as will satisfy him that the candidate is qualified for such work, and issue to the said candidate a license to teach the German language as a branch of study in the graded schools of a town or city; and the trustees of said town or city may remunerate a person holding such a license for performing the specific services thereby authorized out of the common school revenue for tuition.—*Holcombe, Supt.*

6. *Illegal issues of licenses.* If a new superintendent finds that licenses have been illegally issued by his predecessor, he should cancel the records and certificates thereof, and notify the school trustees in the county of such action. Before taking this action he should carefully investigate the facts, and notify the parties interested, giving them an opportunity to show that their licenses are valid.—*Holcombe, Supt.*

7. *Additional branches.* Ordinarily, an examination in the enumerated subjects is sufficient, but when a person is to teach other branches his proficiency therein should not be left to conjecture. He should be examined by the county superintendent in such "other branches" as he is expected to teach. This is expressly stated in the law in case a district school meeting has designated additional branches (§ 4502), and is an obvious inference in all cases where additional branches are to be taught.—*Holcombe, Supt.*

8. *Consecutive licenses.* The provision of the law which creates the thirty-six-months and eight-years licenses contemplates that they should take effect consecutively, and not over-lap each other in time. A person who has received two county licenses of the first grade in succession "may receive at the expiration of such several licenses a license for the term of eight years," upon passing a certain examination. The intention of the legislature was to relieve teachers of approved skill and ability from the burden of frequent examinations. But the benefits of the eight-years professional license are carefully guarded, being extended to those persons only who have held consecutively a twenty-four-months license (heretofore issued), and a thirty-six-months license, or who shall hold hereafter two thirty-six-months licenses in succession. The period of the currency of these two licenses is provided as a trial period in which the teacher may gain experience and prove his ability, and I think the law should be interpreted as not permitting such period to be abridged by granting the second or third license more than thirty days before the expiration of the one preceding it. Yet the examination for such license may not improperly be held within a reasonable time previous to the expiration of the preceding one. Licenses, to be consecutive, need not be issued in the same county.—*Holcombe, Supt.*

9. *Professional licenses.* It is ordered that persons who have received two county licenses of the first grade, in conformity with the state superintendent's opinion on "consecutive licenses" (note 8, above), may be admitted within one year of the expiration of the second of such licenses to an examination for an eight-years professional license, which shall comprise the subjects of elementary algebra, elements of physics, elements of botany, grammar, civil government, American literature, and the science of teaching. Such examination shall be conducted by the county superintendents in the several counties, upon questions prepared by the state board. The manuscripts shall be sent to the board for gradation, and the certificates granted shall take effect upon the expiration of the thirty-six months licenses held by the persons receiving them. An examina-

for eight-years licenses shall be held in May, 1886, and annually thereafter.—*Order of State Board, Nov.* 1, 1883.

10. *Miscellaneous.* A license may be refused to an applicant on the ground of incompetency to govern a school. A license may be issued without the trustee's certificate of character, if the superintendent is satisfied on the subject. The superintendent is not bound to examine applicants, who have no intention to teach in the county, as the examinations are not provided for the amusement of novices. A license can not legally be antedated, but if antedated it is good from the day when it is issued for the period named on its face.—*Bloss, Supt.*

11. *Examination in two counties.* There is nothing in the law directly prohibiting a superintendent from issuing a license upon manuscripts made in another county under the supervision of another superintendent. But the practice is not entirely safe, and should be carefully guarded. If the manuscripts are sent by the superintendent of another county, with his certificate that they have been fairly and honestly made, and his recommendation of the applicant, as to character and ability, the superintendent receiving them may grade them, and if they prove satisfactory, issue a license to the applicant.—*Holcombe, Supt.*

12. *Superintendent does not act judicially.* A county superintendent in the granting or refusing of a license does not act as a judicial officer, 104 Ind. 548.

13. *Liability for refusing license—Discretion.* The statute confers upon the county superintendent a discretion on the subject of licensing teachers, which is so far analogous to judicial discretion that he is protected from any claim for damages on account of any mere mistake in his decision, or error in judgment, either in granting or withholding a license. But he is liable in damages for maliciously withholding a license to teach from an applicant entitled to receive the same, and he will be held to have acted maliciously where he acts either from willful and wicked or from corrupt motives, 104 Ind. 548.

14. *Issuing certificate.* There is no legal distinction between the granting of a license to teach and the act of issuing a certificate of that fact. The terms are controvertible, and the "licensing" implies the issuing to an applicant of a written permission to teach in the public schools, 104 Ind. 548.

15. *Record of license.* In an action against a county superintendent for maliciously withholding a license, oral proof of an admission by the defendant that he had granted a license to the applicant is inadmissible, unless it is first shown that he kept no such record as required by the statute, or that such record was incorrect; but in order to prove that no record was kept, or that the one kept was incorrect, it must be averred in the pleading that such is the fact, 104 Ind. 548. The presumption is that the superintendent kept a record of his proceedings, which would itself be the best evidence, 104 Ind. 548.

16. *Branches taught and books used.* The legislature has the power to prescribe a course of study and to require a designated series of books to be used in the schools, and to require that the books selected shall be obtained by the school officers from the persons to whom a contract for supplying them may be awarded. It may not only prescribe regulations for using the books designated, but it may, also, declare how the books shall be obtained and distributed, 122 Ind. 462; 25 Minn. 1, S. C. 33, Am. Rep. 450; 5 Sawy. 502; 18 Nev. 173; 55 Cal. 331; 49 Cal. 684.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4426. May revoke licenses. 36. The county superintendent shall have power to revoke licenses granted by him or his predecessors, for incompetency, immorality, cruelty, or general neglect of the business of the school; and the revocation of the license of any teacher shall terminate his employment in the school which such teacher may have been employed to teach.

1. *Procedure.* In the revocation of a license the superintendent may act upon his own knowledge, or he may proceed upon petition of the patrons. In the former case he should make out and record charges and specifications, based on his own knowledge, and furnish the teacher a copy thereof, citing him to

appear at a certain time and answer, with such evidence and explanations as he may be able to give. The answer and evidence should be made matter of record, together with the finding of the superintendent. In case a petition for the revocation of a license is received from patrons, the superintendent may dismiss it if the complaints are of a frivolous character. A mere petition is not enough. Definite charges and specifications should be filed with it. When such charges are received, the superintendent should fix an early day for the trial, notify the teacher of the pendency of charges and furnish him a copy thereof, and notify all parties interested of the time and place at which the trial will be held. An accurate record of all the proceedings should be made and all papers filed, for use in case of an appeal to the superintendent of public instruction. Whenever a license has been revoked the superintendent should make a record of the fact, and immediately notify all the trustees of the county.—*Smart, Supt.*

2. *A license a vested right.* A license having once been granted, the teacher acquires a proprietary interest in it. It is in one sense property. No teacher should be deprived of his license without an opportunity to answer charges that may be brought against him, whether by the county superintendent or others.—*Smart, Supt.*

[1873, p. 75. Approved and in force March 8, 1873.]

Sec. 4427. Examinations—License. 37. The county superintendent shall hold at least one public examination in each month in the year in his county; and in no case shall he grant a license upon a private examination; and all licenses granted by him shall be limited to the county in which they are granted.

1. This section was amended in 1875 (Acts 1875, p. 131), but the amendment was void, 52 Ind. 420.

2. *Comments.* The day of the examination should be the same in each month. If such a day is fixed and adhered to, convenience will be secured to teachers and to the public. As the object of the law will not be defeated, but rather promoted thereby, it is held that the examiner may hold more than one examination each month. An examination will be public in the sense here required when it is publicly announced and is held in a public hall or office.—*Hoss, Supt.*

[1865. Approved and in force March 6, 1865.]

Sec. 4428. Record-book—Report to state superintendent. 38. The county superintendent shall provide a blank-book at the expense of the county, in which he shall keep minutes of his proceedings, and shall deliver said record, and all other books, papers, and property appertaining to his office, to his successor, and take a receipt therefor. Said superintendent shall, in the last week of May, annually, report to the superintendent of public instruction, the names of the persons to whom he has granted license since the last report, for his county; distinguishing between those licensed for six, twelve, eighteen, and twenty-four months; giving the number of males, and the number of females, and the total number licensed; and the number, but not the names, of applicants for license who have been rejected; and the number of licenses revoked.

1. The amendment of the teachers' license law abolished the eighteen-months and created a thirty-six-months license. This section was inadvertently not changed, but the report must be conformed to the new arrangement.

2. See § 4425, *notes* 14 and 15.

[1873, p. 75. Approved and in force March 8, 1873.]

Sec. 4429. General duties. 39. The county superintendent shall have the general superintendence of the schools of his county. He shall attend each township institute at least once in each year, when he shall preside at the same and conduct its exercises. He shall visit each school of the county at least once each year, for the purpose of increasing its usefulness and elevating, as far as practicable, the poorer schools to the standard of the best. He shall encourage teachers' institutes and associations, and shall labor, in every practicable way, to elevate the standard of teaching and to improve the condition of the schools of the county. In all controversies of a general nature arising under the school law, the opinion of the county superintendent shall first be sought; whence an appeal may be taken to the state superintendent, on a written statement of facts, certified to by the county superintendent: *Provided*, That nothing in this act shall be so construed as to change or abridge the jurisdiction of any court in cases arising under the school laws of the State; and the right of any person to bring suit in any court, in any case arising under the school laws, shall not be abridged by the provisions of this act. He shall, at all times, carry out the orders and instructions of the state board of education and the superintendent of public instruction, and shall constitute the medium between the state superintendent and subordinate school officers and the schools: *Provided*, That city schools having a superintendent employed by their board may, at the request of said board, be exempt from the general superintendence authorized in this section.

1. The superintendent has the care and oversight of the schools of his county, with authority to direct in their organization and management.—*Hopkins, Supt.*

2. *Visitation.* The provision requiring superintendents to visit their schools once a year is peremptory. If he fails to do so, it is a good cause of removal. There can hardly be any grosser neglect than a failure to visit the schools at least once a year.—*Baldwin, Atty. Gen.* To make his visitations of much value the superintendent ought to visit each school at least twice a year. This can be done under the law by giving each school a half day at a visit. I think it is safe to say it was the intention of the legislature that the superintendent should be allowed at least as many days for visiting the schools as he has different teachers to visit. The commissioners should not in any case restrict him to a less number of days than this, and if he is a prudent man it would be safe to let him visit at his own discretion. The restriction can be placed upon him at any time if it be shown he abuses his privilege.—*Smart, Supt.*

3. *Exemption of cities.* This privilege is not extended to incorporated towns. The request should be addressed to the county superintendent, and should be entered in the records of the city school board. From the date of the request and so long as a city superintendent is employed the county superintendent has no authority over the city schools, but such authority will revive if the city board fails to employ a superintendent.—*Holcombe, Supt.*

4. *Vaccination.* The duty of enforcing rules regarding vaccination of school children belongs primarily to town, city, and county boards of health, and secondarily, and after written notice from the state board of health, to the county superintendent.—*Baldwin, Atty. Gen.* See R. S. 1881, § 4994.

5. *Power as to course of study and rules.* The management and control

of the schools is conferred by law upon the trustees, and this power involves the right to prescribe a course of study and make rules and regulations. But the trustees also appoint a county superintendent, who, in a large department of school government, is the representative and agent of the trustees, and to him their powers are delegated so far as is necessary to successful administration. I think, therefore, that if neither the county board of education nor the trustees individually have taken the necessary action, the superintendent may arrange a course of study and direct its enforcement in the schools, and may make reasonable rules and regulations, and the refusal of a teacher to obey the superintendent in these particulars would be such "neglect of the business of the school" (§ 4426) as would warrant a revocation of his license, or would indicate such incompetence "to successfully teach" (§ 4425) as would warrant a refusal to grant him another license.—*Holcombe, Supt.*

6. *Procedure in appeals.* See § 4538.

[1873, p. 68. Approved and in force March 8, 1865.]

Sec. 4430. When must enumerate. 40. When any trustee shall neglect to file with the county superintendent an enumeration of the children of the township, town, or city, as required by section 4472, the county superintendent shall, immediately after the first day of May in each year, employ a competent person to take the same, and allow a reasonable compensation for such services, payable from the special school revenue of the township; and shall proceed to recover the same in the name of the State of Indiana, for the use of said revenue of said township, by action against the said trustee in his individual capacity; and in such suit the county superintendent shall be a competent witness.

[1883, p. 120. Approved and in force March 6, 1883.]

Sec. 4431. Annual reports. 41. The county superintendents shall, on or before the fifteenth day of May, annually, make out and forward to the state superintendent the enumeration of their respective counties, with the same particular discrimination required of the trustee. They shall, on or before the first day of September, annually, furnish the statistical information, which trustees are required to report to them in such form as may be prescribed by the superintendent of public instruction. They shall, also, furnish with such statistical report, such additional information embodied in a written report relative to the condition of the schools, school-houses, and the general progress of education, etc., in the county, as the state superintendent may from time to time call for. On failure of any county superintendent to make his report of enumeration by the first day of September [fifteenth day of May], his county shall be subject to a diminution of twenty-five dollars in the next apportionment of school revenue by the state superintendent; and, on failure to make his statistical and other reports by the fifteenth [first] day of September, his county shall be subject to a diminution of ten dollars in the next apportionment likewise. The sum thus withheld may be collected from said county superintendent, in a suit before a justice of the peace, prosecuted in the name of the State by any person living in said county who has children enumerated for school purposes,

for the current year, who is aggrieved by said diminution. Said suit shall be commenced within two years from the time when said report was due, and not afterward: *Provided*, That said county superintendent may discharge himself from liability to such suit by a certificate of the postmaster, that said report was mailed in due time, together with his own affidavit of that fact. [El. Sup. § 1273.]

1. *Amendments explained.* The school law of 1861 for the first time required the trustees to report the enumeration to the county examiner, and the examiner to report it to the superintendent of public instruction. The report was then made on or before September 1st. The amendment of the section in 1873 changed the date to May 15th, as it still remains, and fixed September 15th as the date of the statistical report. The amendment of 1883 changed this latter date to September 1st. In re-writing the section for amendment in 1883 a mistake was made in the latter part by naming September 15th instead of May 15th, and the 15th instead of the 1st of September, as the last days of grace for the several reports.—*Holcombe, Supt.*

2. *Private institutions.* County superintendents are expected to furnish statistical and other reports relative to private schools, high schools, colleges, and other private institutions of learning within their respective counties, so as to enable the superintendent of public instruction to present a view of all the educational facilities of the State.—*Hopkins, Supt.*

3. *Bureau of statistics.* County superintendents are also required to furnish information to the state bureau of statistics. R. S. 1881, § 5720.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4432. Apportionment—Report. 42. The county superintendent shall make out, from the lists of enumeration and the reports of transfers, the basis of the apportionment of school revenue to the several townships, towns, and cities of their respective counties, and parts of congressional townships of adjoining counties whose congressional township fund is managed in their counties, and report the same to the proper county auditors by the first day of June, annually, so as to enable county auditors to accurately apportion the school revenue for tuition.

1. *Congressional townships.* The basis of apportionment should show, by number and range, the congressional townships, or parts of congressional townships, which form each civil township, the number of children enumerated in each of such parts; also the whole number of children enumerated in each civil township. With the basis of apportionment he should file with the auditor a separate statement showing what congressional townships whose funds are managed in his county are divided by the county line; also the number of children enumerated in each part of such townships—*Hoss, Supt.*

[1873, p. 75. Approved and in force March 8, 1873.]

Sec. 4433. Compensation. 43. The county superintendent shall receive four dollars for every day actually employed in the discharge of the duties required by this act. But before the county commissioners shall allow his per diem, the same shall be presented in a bill of account, stating, in separate items, the nature and amount of service rendered on each day for which he claims compensation; which bill of account shall be verified by affidavit to the effect that the same and each item thereof is just and true. The county auditor shall draw his warrant on the county tseasurer

for the amount allowed by the board in favor of said superintendent, and the treasurer shall pay the said warrant out of the ordinary county revenues: *Provided, however,* That the said board of commissioners shall have power to determine the number of days in each year in which the county superintendent may labor in the performance of the duties required of him in visiting schools: *Provided, further,* The number of days so allowed in each year for visiting schools shall not be less than the whole number of schools in such county over which such superintendent has control; and he shall receive no perquisites whatever.

1. *Limitation of visits—Mileage.* Until the board has established such limitation or number the superintendent is justified in claiming pay for every day actually used by him in performing such duties; and the board can not, after he has performed such labor, then limit the number so as to reduce it below the number of days he has labored in the performance of his duties in visiting the schools for the past year. They must establish such number before he has performed the labor, and if they do not and he exceeds the number they afterward establish, he is not bound by such action of the board, except as to work he may do in the future. This statute makes no allowance for mileage.—*Baldwin, Atty. Gen.;* § 4429, *note* 6.

2. *Blanks—Stationery—Postage.* The blanks for reporting condition of schools, and the printed course of study, ordered by the county board of education, may be paid for by the trustees of each township out of the special school revenue, and the bills presented by them to the board of commissioners in their annual settlements. In regard to blank forms of licenses being paid for by the county, that is a matter of economy for the commissioners to decide upon. If they will not pay for such blanks, then the superintendent must furnish them at his own expense, or write them out. In the last case he would be entitled to charge his per diem while so actually employed. Probably, under § 6028 R. S. 1881, the board is authorized to furnish him stationery, which may include these blanks. So of postage and expressage. There are certain articles and information which the superintendent must furnish the teachers and officers of schools. He can do this in person, or else by mail or express. When a letter will do as well as a personal visit, and it is necessary to convey the information, it is economy in the county to furnish postage rather than have the superintendent go personally and pay him at the rate of four dollars per day.—*Baldwin, Atty. Gen.*

3. *Office furnished* The county commissioners are not required to furnish the county superintendent an office. Even if they were required to furnish him an office, they would not, in the absence of a contract, be liable to him for the use of an office of his own for the purposes of the county superintendent, 96 Ind. 384. It is undoubtedly proper, and not at all in conflict with the above decision of the court, that the commissioners should allow the county superintendent the use of a room in the court-house, whenever possible. The newer court-houses invariably provide accommodations for the county superintendent. —*Holcombe, Supt.*

4. *Reports to bureau of statistics.* The duty imposed on the county superintendent of schools, by R. S. 1881, § 5720, to make reports to the bureau of statistics, is an official duty imposed upon the officer, for which he is not entitled to compensation, 95 Ind. 427.

5. From the fact that R. S. 1881, § 5720, enumerates a large number of persons or classes of persons from whom reports may be exacted, I am of the opinion that each person or officer mentioned can be required to report only those matters with which their business makes them conversant. Thus the county superintendent can be required to report the educational statistics of the county, but can not be made a collector of general information.—*Holcombe, Supt.*

6. *Amendment to this section illegal.* In 1875 (Acts 1875, p. 131) it was at-

tempted to amend this section, but the amendment was held void, 52 Ind. 420; 70 Ind. 208.

7. *Allowance of claim.* In making an allowance of the claim of the county superintendent for services the county commissioners act in a legal capacity; and the allowance is a bar to a further claim, even though such former claim was filed and allowed under an invalid statute, 70 Ind. 208; 71 Ind. 185.

8. *Allowance of part of claim.* The allowance of part of the claim of the county superintendent is a bar for the allowance of the remaining part, 71 Ind. 185.

[1875, p. 131. Approved and in force March 9, 1875.]

SEC. 4434. Duty as to apportionment. 6. Such superintendent shall see that the full amount of interest on school fund is paid and apportioned, and, when there is a deficit of interest of any school fund, or loss of any school fund or revenue by the county, that proper warrants are issued for the reimbursement of the same; but no per centum, beyond what is provided for herein and allowed, shall in any case be paid him by said board of commissioners.

This was a supplemental section to an act, all the rest of which was declared void, 52 Ind. 420.

[1873, p. 75. Approved and in force March 8, 1873.]

SEC. 4435. Duty as to school fund. 7. The official dockets, records, and books of account of the clerks of the courts, county auditor, county commissioners, justices of the peace, prosecuting attorneys, mayors of cities, and township and school trustees, shall be open at all times to the inspection of the county superintendent; and whenever he shall find that any of said officers have neglected or refused to collect and pay over interest, fines, forfeitures, licenses, or other claims due the school funds and revenues of the State, or have misapplied the school funds or revenues in their possession, he shall be required to institute suit in the name of the State of Indiana for the recovery of the same, for the benefit of the school funds or revenues, and make report of the same to the board of county commissioners and to the state superintendent.

Instituting suits. It was held by the supreme court in Moore *v.* State, 55 Ind. 360, that the section which now appears as R. S. 1881, § 5668, repealed so much of this section as authorized the superintendent to bring actions, and made the attorney general the only proper relator; but in the later case of Carr *v.* State, 81 Ind. 342, the court overruled [disapproved] its former decision, saying: "We perceive no reason for saying that there is any inconsistency between this act which confers upon the attorney-general power to collect and to sue, and the previous acts which conferred similar power on other officers. They may well stand altogether, and whichever officer first institutes a suit will have the precedence." In view of the uncertainty surrounding this question it would probably be held to be a sufficient compliance with the law if the superintendent should examine dockets and make an investigation whenever he has reason to suspect that collections have been neglected, or school funds or revenues misapplied, by the officers named above, and should notify the attorney-general in case there seems to be ground for a suit.—*Holcombe, Supt.*

[1877, p. 122. Approved and in force March 2, 1877.]

SEC. 4436. County board of education. 8. The county superintendent and the trustees of the townships, and the chairman of

the school trustees of each town and city of the county shall constitute a county board of education. Said board shall meet semi-annually at the office of the county superintendent on the first days of May and September (unless the said days be Sunday, and if so on the day following), a majority of whom shall constitute a quorum. The county superintendent shall preside at the meetings of the board, shall be allowed to vote on all questions as other members of the same are allowed to vote. Said board shall consider the general wants and needs of the schools and school property of which they have charge, and all matters relating to the purchase of school furniture, books, maps, charts, etc. The change of text-books, except cities, and the care and management of township libraries, shall be determined by such board, and each township shall conform as nearly as practicable to its action; but no text-book hereafter adopted by the county board shall be changed within six years from the date of such adoption, except by unanimous vote of all the members of such board. *Provided*, That any text-book heretofore adopted by the county board of education shall not be changed within three years from the date of its adoption.

1. This section has been repealed in many of its provisions with respect to the choice of books, by section 4420*a* and those following on the subject of school books. The schools of the county must adopt and use the books now furnished in accordance with the provisions of those sections. We append, however, a number of decisions of public officers, still applicable under the provisions of this section, yet remaining in force.

2. *Adjourned, not called meetings.* The law provides for the assembling of the county board semi-annually on the first days of May and September. The board having met on the first day of September they would have a right to adjourn from day to day until the business before them was completed. But if they have adjourned *sine die*, they would not have a right to meet any more until the first day of May.—*Woollen, Atty. Gen.* I think this opinion of Attorney-General Woollen properly states the law on the subject. See 67 Ind. 71; 74 Ind. 491.—*Hord, Atty. Gen.*

3. *Quorum, course of study, rules and regulations, record, etc.* In the absence of the county superintendent the board may appoint one of its members president *pro tem.* No action can be taken by the board unless a majority of all the members are present. If such majority be present at any meeting the board may take legal action upon suitable questions by a majority vote of those present; but some questions require a majority vote, and others a unanimous vote, of all the members of the board. It is very important that school officers and county boards should make a careful record of their proceedings. If a board takes any legal action, and fails to record it or makes an incorrect record, the record can be amended by order of the board at a subsequent meeting. A legal act is not necessarily void by reason of a failure to make a record of it; but if a question should arise as to the action of a board, evidence may be taken at a subsequent meeting outside the records, and a new record may be made in accordance with the fact as ascertained.—*Smart, Supt.* The county board and trustees have the right to make such rules and regulations, according to law, as will tend to promote the general good of the public schools, and it is the duty of teachers to carry out such rules in good faith.—*Bloss, Supt.*

4. *Can not make contracts.* The county board of education has no power to make contracts. It is merely a *quasi* corporation with but limited powers, and is nowhere authorized to contract, or sue or be sued. As a board it has no control of revenues, nor power to order any expenditure. But all or any number of the trustees may join together in purchasing or contracting for supplies,

and such action may often be advisable. It is not, however, the action of the board.—*Holcombe, Supt.*

5. *Libel.* A newspaper publication charging that a county superintendent, for a consideration in money, had, by the use of his influence, induced the county board of education to order a change in school books, was held to be a libel in the sense of section 1925, R. S. 1881, on the subject of criminal libel, 96 Ind. 461.

6. *Legislature may prescribe duties of officers.* The power over the school system is legislative and exclusive, and the legislature has authority to impose upon all officers whose tenure is legislative, such duties respecting school affairs as it deems proper. All such officers take their offices *cum onere*, and must do what the legislature commands, or else resign, 122 Ind. 462.

[1859, p. 181. Approved March 3, 1859, and in force August 6, 1859.]

SEC. 4437. School township. 1. Each and every township that now is, or may hereafter be organized in any county in this State, is hereby also declared to be a school township, and, as such, to be a body politic and corporate, by the name and style of "——— School township of ——— county," according to the name of the township and of the county in which the same may be organized; and, by such name, may contract and may be contracted with, sue and be sued, in any court having competent jurisdiction.

1. *Succession to districts.* All school-houses heretofore built by districts become the property of the townships in which the districts are situated, all debts of districts become the debts of the townships, and all school-houses must hereafter be built at the common expense, and become the common property of the townships.—*Larrabee, Supt.*

2. *Corporations distinct.* There are two corporations in a township [coterminous in territory], with almost the same name. * * * The first is denominated a civil township, the second a school township. * * * It must be contemplated that the funds, etc., of these two corporations shall be kept separate. It is as an officer of the school township, and not as an officer of the civil township, that the trustee has authority and power to levy a tax for the erection of school-houses, and to expend the same for that purpose. We think it must follow that it is as trustee of the school township and not as trustee of the civil township that the trustee must contract for the building of school-houses. We do not think the trustees of the civil township can legally contract for the building of a school-house and make the civil township liable therefor, 47 Ind. 554; 62 *id.* 230; 96 Ind. 185; 26 N. E. Rep. 182; S. C. 126 Ind. 281.

3. *Intention considered.* But a note showing on its face that it was given in payment for articles furnished for the use of schools, though executed by a trustee apparently in the name of the civil township, binds the school township, 74 Ind. 93; 81 Ind. 515.

4. *Suit on predecessor's bond.* A township trustee may sue his predecessor and the sureties on his bond and recover moneys due both the civil and school township; but on a complaint in which he sues only as trustee of the civil township he can not recover money due to the school township, 47 Ind. 465.

5. *School-house.* A civil township has no power to build a school-house, nor to bind itself for the cost of one; and a complaint against it to recover the cost thereof, although good as against the school township, will be bad as to the civil township, 52 Ind. 114; 62 Ind. 230; 69 Ind. 102. A suit against a "township trustee," designating him as such, to enjoin the erection of a school-house, is bad on demurrer. It should be against the "school township trustee," 26 N. E. Rep. 182; S. C. 126 Ind. 281.

6. *Presumption.* When a township is designated without the word "school," it must be understood to be the "civil" township, 52 Ind. 114; 62 Ind. 230; 26 N. E. Rep. 182; S. C. 126 Ind. 281.

7. *Suit against the school trustees.* A suit can not be maintained against the school trustees of a township; it must be against the "School Township of ———," filling the blank with the name of the township, 52 Ind. 267; 51 Ind. 206; 75 Ind. 368; and an action against the "trustee of licensed school townships" is against the township and not against the trustee, 26 N. E. Rep. 567.

8. *School taxes.* A suit against a civil township concerning school taxes can not be maintained, 59 Ind. 65.

9. *Loan of money.* A loan of money to a township trustee for the purpose of completing a needed school-house, the trustee not then having funds in his hands to furnish it, and the expenditure of the money for such purpose, binds the school township, 73 Ind. 501, although he has no authority to borrow money, 75 Ind. 361. In such a case it must be averred and proved that the school township received the benefit of the money, 75 Ind. 361, 368; 102 Ind. 464; 98 Ind. 497; 83 Ind. 121; but see *note* 10.

10. *Promissory note.* A township trustee has authority to buy *school furniture* for the school township, and to give the promissory note of the school township therefor; and payment can not be resisted on the ground that the goods were not needed, and the price too high, unless *fraud* is shown, nor then without an offer duly made to return the goods, 81 Ind. 515. Such obligation constitutes *prima facie* a good cause of action against the school township, 101 Ind. 503. See, however, 102 Ind. 464, and 107 Ind. 43. The note is not invalid because sections 4438*a* and 4438*b* have not been complied with, 101 Ind. 503; 83 Ind. 121. But promissory notes illegally issued are void in their inception, and create no right of action in any one, 124 Ind. 193; 116 Ind. 130; 112 Ind. 323; 27 N. E. Rep. 329. But see § 4438*c*.

11. *Mandate or suit.* Where the ordinary civil action will afford the plaintiff an adequate legal remedy, and especially where the validity of his claim is controverted, he can not resort, in the first instance at least, to the extraordinary proceeding by mandate, 96 Ind. 185.

12. *When note void.* If the school trustee have money in his hands derived from the school revenues or funds, he can not borrow money and bind the township thereby, and the lender can not be subrogated to the rights of the persons holding claims against the school township, 102 Ind. 464.

13. *Bank deposits.* Where the trustee of a school corporation executes promissory notes in the name of the corporation, deposits the money in his own name, and draws it out upon checks signed by himself as an individual, he becomes the creditor of the bank for such deposits, and the transaction is one between the bank and its depositor, 102 Ind. 464.

14. *Authority to borrow money.* The trustee of a school corporation has no authority to borrow money and execute promissory notes therefor in the name of the corporation, 102 Ind. 464.

15. *Estoppel.* Certificates of indebtedness issued by the trustee without any consideration are void and can not be enforced against the township; nor, in such a case, will the acts, conduct, or promises of the trustee, or of his successors in office, estop the township from pleading the want of consideration, as a sufficient defense to any suit against it upon such order or certificate, 90 Ind. 101; 124 Ind. 193.

16. *Limited authority—Notice.* A school corporation is one of very limited powers; the authority of the township trustee is purely statutory, and all who deal with him must, at their peril, ascertain the extent of his authority, 102 Ind. 464; 107 Ind. 43.

17. *Statute of limitation.* If it is apparent that the suit is against a school corporation, although indistinctly stated, the complaint may be amended so as to make it clearly a case brought against such corporation, although between the time of filing the original complaint and making the amendment the statute of limitations has become a bar; the amendment relates back to the time of filing the original complaint, 104 Ind. 168.

18. *Complaint.* A complaint against a school township, on a contract for school supplies, to be good must allege that such supplies are necessary and suitable for the use of the public schools of the township, and that they have

been delivered to and accepted by such township, 107 Ind. 43; 26 N. E. Rep. 567; 27 N. E. Rep. 329.

19. *Employment of teacher.* If it be shown that the plaintiff was employed by A., who was at the time trustee of the township, that is sufficient to show that the employment was by a school trustee, the township trustee being *ex officio* school trustee, 119 Ind. 320. But this would not be the case if the action was against a school town; for it has both civil and school trustees.

20. *Judicial notice.* The courts do not judicially know the names of the townships of a county, 34 Ind. 405. Courts take judicial notice that the trustee of the civil is trustee of the school township; and that in contracting for school apparatus, he contracts as trustee of the school township, 106 Ind. 233.

21. *Name.* The name of a township for school purposes is "The school township of ———," supplying the civil name of the township, as "Wayne," and adding "of ——— county"; of a city it is "The school city of ———," adding the name, as "Logansport," the addition of the county being unnecessary, for the court judicially knows the county in which a city (*or*, town) is incorporated; of a town, "The school town of ———," adding the name of the town, as "Royal Center," the name of the county in which the town is situated being unnecessary, 47 Ind. 554; 55 Ind. 7; 62 Ind. 257; 67 Ind. 380. The name of a township for civil purposes, illustrated by an example, is "Wayne township of Marion county," R. S. 1881, § 5990.

22. *Service of process.* In an action against a school township the process is served upon the trustee, and a return of service upon the trustee of the township, without stating that he is the trustee of the "school" township is sufficient. But in a case against a school town the process must be served upon the "school" trustees, or one of them at least, and not upon the trustees of the civil town, and the sheriff's return must show that the person served with the process was a school trustee of the town. In an action against a "school" city, the process must be served upon at least one school trustee, and the return must be as explicit as in the case of a school town, 55 Ind. 7. See R. S. 1881, § 5990. See 26 N. E. Rep. 567.

23. *Bribery.* See 106 Ind. 233.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4438. Towns and cities. 4. Each civil township and each incorporated town or city in the several counties of the State is hereby declared a distinct municipal corporation for school purposes, by the name and style of the civil township, town, or city corporation respectively, and by such name may contract and be contracted with, sue and be sued, in any court having competent jurisdiction; and the trustee of such township, and the trustees provided for in the next section of this act, shall, for their township, town, or city, be school trustees, and perform the duties of clerk and treasurer for school purposes.

1. See § 4437, *note* 21; and R. S. 1881, § 5990.

2. *Corporations independent.* Each civil township, and each incorporated town and city is a distinct school corporation, entitled to receive and expend its proper school moneys independent of any control by any other such corporation, 64 Ind. 275.

3. *Designation in suits.* The character in which an incorporated town may sue or be sued as a school corporation may be designated either in the title of the action as a school corporation or in the complaint by an allegation of that fact, 57 Ind. 335. That case seems to be in conflict with most of the other cases before and after it. But see 47 Ind. 465; 60 *id.* 26; 61 *id.* 212.

4. *Property and revenues.* When a village becomes incorporated the school town thus created becomes, as trustee by statute, the successor of the

township in the right to the possession and control of school property within its territory, 86 Ind. 582. And as soon as school trustees are appointed and qualified they have a right to demand and receive of the township trustee whatever sums of money he has received by reason or on account of the school children residing within or transferred to the town, and he can not lawfully withhold it on any ground. He received and held it in trust for those children, 64 Ind. 275. And see § 3195, *note* 6.

5. *Dog fund.* Disposition under the dog law of 1881, R. S. 1881, § 2651; 90 Ind. 495; under present law, see §§ 4487*a* and 4487*b*.

6. *Suit on trustee's bond.* A trustee may sue his predecessor on his official bond, without the request of his county commissioners, both in his capacity as civil and school trustee, jointly, 60 Ind. 26; or he may recover the funds of both townships in a suit simply as trustee of the civil township, making, however, the allegations sufficiently broad to cover the school funds, 61 Ind. 212.

7. *Mixing funds.* The use of the school funds for the civil township, or *vice versa*, is a conversion thereof; and renders the trustee liable on his bond. So the use of one fund in the place of another fund is such a conversion, 60 Ind. 26; but using a special school fund for the common school fund is not such a conversion as will render the trustee liable on his bond, 26 N. E. Rep. 150.

8. *Election of township trustee.* R. S. 1881, §§ 4735 and 5991.

9. *Corporations distinct.* A civil township and the school township of the same territory are distinct corporations, and each must sue and be sued in its own proper corporate name, and neither can sue in the name of the other, nor in that of the township trustee. So also a civil town and the school town are distinct corporations, which must sue and be sued in its own corporate name, 59 Ind. 65.

10. *Power of school city.* A city organized under the general law for the incorporation of cities has no power to buy or give its promissory notes for a county seminary, though for school purposes in the city. That power belongs to the school corporation of the city, 87 Ind. 212.

11. *Division of revenues.* Where money has been apportioned to a school township and received by the trustee thereof, some of which belongs to a school town afterwards organized, and he refuses to pay it over, he may be compelled by mandate to do so, and the school trustees of the town are the proper relators in such a suit, 89 Ind. 249.

12. *Property of school corporation.* Real estate and buildings held by a school corporation for school purposes are subject to appropriation for highways as is private property, 88 Ind. 453.

[1875, p. 162. Approved March 11, 1875, and in force August 24, 1875.]

SEC. 4438*a*. Power to incur debt. 1. Whenever it becomes necessary for the trustee of any township in this State to incur, on behalf of his township, any debt or debts whose aggregate amount shall be in excess of the fund on hand to which such debt or debts are chargeable, and of the fund to be derived from the tax assessed against his township for the year in which such debt is to be incurred, such trustee shall first procure an order from the board of county commissioners of the county in which such township is situated, authorizing him to contract such indebtedness. [R. S. 1881, § 6006.]

SEC. 4438*b*. Petition to incur debt. 2. Before the board of commissioners shall grant such order, the township trustee shall file, in the auditor's office of his county, a petition, setting forth therein the object for which such debt or debts are to be incurred and the approximate amount required, and shall make affidavit that he

has caused notice to be given of the pendency of such petition, by posting notices, in not less than five public places in his township at least twenty days prior to the first day of the session of said board. [R. S. 1881, § 6007.]

Sec. 4438*c*. Notice of days for business. 3. Such township trustee shall designate certain days in each week or month, as may be required, in which he will attend to the business of his township, and cause notice thereof to be given to the inhabitants of such township; and all contracts, and auditing, and payment of claims shall be made only on such designated days. [R. S. 1881, § 6008.]

Applicable to school townships. The above three sections are applicable to school townships; and the trustee can not, without an order of the board of commissioners authorizing it, contract a debt for the building of a school-house which will make the aggregate debts chargeable to the special school fund exceed the amount of that fund on hand and to be derived from the tax assessed against the township for the year in which the debt is to be incurred, and he may be enjoined from so doing by a tax-payer, 106 Ind. 18. A contract made for the construction of a school-house without such an order is void, 122 Ind. 377; 123 Ind. 1, 600; 116 Ind. 130; 112 Ind. 323, 467. If the contract is for supplies which have been received and retained, and which are beneficial to the township, it is competent for the township to show that the property is worth less than the contract price, without offering to rescind the contract or tendering back the property received, In such a case the contractor may recover from the township the actual cash value of the property received, 123 Ind. 1, 600. See § 4437, *note* 10. A complaint need not anticipate and negative the exceptions contained in the above sections, 83 Ind. 121. To render the trustee liable on his bond for indebtedness contracted in violation of these sections, he must have contracted in the name or in behalf of the township, 112 Ind. 323. "Fund on hand" means money actually in the hands of the trustee, 116 Ind. 467. Debts incurred in violation of these sections were legalized in 1883 (Acts 1883, p. 114; El. Sup. §§ 1965, 1966), 116 Ind. 467; but the legalizing act was repealed in 1889 (Acts 1889, p. 278; El. Sup. § 1967).

[1876, p. 135. Approved and in force March 12, 1875.]

Sec. 4439. School trustees in cities and towns. 5. The common council of each city and the board of trustees of each incorporated town of this State shall, at their first regular meeting in the month of June, elect three school trustees who shall hold their office, one, two, and three years respectively, as said trustees shall determine by lot at the time of their organization, and, annually thereafter, shall elect one school trustee, who shall hold his office for three years. Said trustees shall constitute the school board of the city or town; and, before entering upon the duties of their office, shall take an oath faithfully to discharge the duties of the same. They shall meet within five days after their election, and organize by electing one of their number as president, one as secretary, and one as treasurer. The treasurer, before entering upon the duties of his office, shall execute a bond, to the acceptance of the county auditor, conditioned as in ordinary official bonds, with at least two sufficient freehold sureties, who shall not be members of said board, in a sum not less than double the amount of money which may come into his hands, within any one year, by virtue of his

office. The president and secretary shall each give bond, with like sureties, to be approved by the county auditor, in any sum not less than one-third of the treasurer's bond. All vacancies that may occur in said board of school trustees shall be filled by the common council of the city or board of trustees of the town; but such election to fill a vacancy shall only be for the unexpired term. The board of school trustees shall, each year, within five days after the annual election of a member, reorganize their board and execute their respective bonds for the ensuing year. Said trustees shall receive for their services such compensation as the common council of the city or the board of trustees of the town may deem just; which compensation shall be paid from the special school revenue of the city or town.

1. *Lucrative office.* The office of school trustee is a lucrative office, and he can not hold the office of road supervisor, 14 Ind. 182, nor trustee of the State Institute for the Deaf and Dumb, 26 N. E. Rep. 893. But a trustee of an incorporated town may be elected to the office of school trustee, 60 Ind. 288.

2. *Time of election.* As to the time of election, this section is merely directory; and if omitted at the time, it may be made afterward, 74 Ind. 486.

3. *Resignations.* A resignation of a town or city school trustee should be addressed to the body that elects, and is complete without formal acceptance; yet its withdrawal even after acceptance but with consent of the electing body is equivalent to a re-appointment. In case of such resignation an election to fill the vacancy may be held before the day set for the resignation to take effect, 78 Ind. 570.

4. *Residence—Compensation.* If a town or city officer moves out of his corporation he vacates his office. A married man usually can not, so long as he maintains the family intimacy, keep his family in one place and maintain his residence in another. But if a man is an actual resident of a town at the time of the election, there is nothing prohibiting his election and acceptance of the office of school trustee, although he is not at the time an actual voter.

After a school trustee has performed labor under an ordinance fixing his salary, his right to compensation can not be cut off by a repeal of the ordinance, but he can recover for services rendered at the rate fixed; yet during the employment the compensation may be modified as to the future.—*Baldwin, Atty. Gen.*

5. *Power as to vaccination.* School trustees have the power, as a measure of public safety and to guard against a contagious disease, to order school children to be vaccinated, but they should exercise it with discretion. In some localities there is no danger of smallpox; in others—as a crowded city—when the disease has made its appearance immediate measures should be taken.—*Baldwin, Atty. Gen.*

6. *School board independent.* The board of town trustees can not remove a school trustee from office. There is no law for it. The town trustees have no control over the action of the school board, which has complete control over all the school concerns of the town except levying school taxes. County commissioners have no power to allow a town treasurer compensation out of the school revenue of the town.—*Baldwin, Atty. Gen.*

But the school trustees can not purchase ground or enter into contracts for building except with the approval of the common council or town trustees, § 4491.

7. *Office lucrative.* As the statute provides for the compensation of town school trustees, their office is a lucrative one within the meaning of the constitution, and a person can not hold it at the same time with another lucrative office.—*Hord, Atty. Gen.*

8. *Casting vote—Resolution.* The common council of a city may elect a school trustee by resolution, and in case of a tie vote on such resolution the

mayor may decide by giving the casting vote.—*Woollen, Atty. Gen.* 121 Ind. 206.

9. *Contest.* Pending litigation to determine who is entitled to exercise the office of school trustee, the school trustee *de facto* acts; and where it appeared to the court that A. was in possession of the office of school trustee, it was held proper to compel the county auditor to recognize him as such, 23 Ind. 449. See 27 N. E. Rep 303.

10. *Abolishment of office.* The office of school trustee may be abolished or the term shortened by the legislature, 50 Ind. 194.

11. *Act of* 1873—*Organization.* The above section superseded the amendatory act of March 8, 1873 (Acts 1873, p. 68); 50 Ind. 194. The act of 1873 did not require a yearly organization of the board by annual election of president, secretary and treasurer, 50 Ind. 510; but the present act does.

12. *Misapplication of funds.* A trustee of a town or city who has had no part in the misapplication of the school funds is not liable therefor, 93 Ind. 292.

13. *New board bound by old board's contracts.* A new board of trustees is bound by the valid contracts of an old board, even though such contracts refer wholly to the year covered by the new board's administration. Thus, a contract made by the board of school trustees with a school superintendent prior to the annual election, in June, of a new member of the board and the reorganization, for services to be performed after the election of such member, is valid and binding on the school corporation, 106 Ind. 478 (distinguishing 87 Ill. 255). So the old board can employ teachers for the ensuing year, *id.;* 27 N. E. Rep. 303. See § 4444, *note* 6.

14. *Suit on treasurer's bond—Penalty.* The successor of the outgoing treasurer may sue him on his official bond, and is the proper relator to do so, without an order of the county commissioners, if he fails to turn over to him the funds in his hands. Such incoming treasurer is entitled to receive money only from his predecessor in discharge of a sum due from him in his official capacity, and the latter can not compel him to receive notes taken upon a loan of school funds, although the loan was made at the direction of the school trustees. In such an action it must be averred and proved that the term of the defendant ex-treasurer had expired; but it is sufficient if it appears from the facts pleaded that his office term has expired, and that a successor has been chosen and has qualified. Such outgoing treasurer is liable to the penalty of ten per cent., provided in § 4441, 110 Ind. 472; see § 4441, *note* 9.

15. *Suit against towns.* A complaint against a school town alleging the employment of plaintiff by the defendant to teach school and breach of the contract, is sufficient without alleging employment by the trustees of the town or that the town was incorporated, or that there was a board of trustees. In such a case a paragraph of a complaint founded on an account is good, 100 Ind. 268.

Sec. 4440. Trustees' bonds—Vacancy. 6. The county auditor, in fixing the penalty and approving and accepting the bonds of such trustees, shall see to their sufficiency to secure the school revenues which may come into their hands, as well as the ordinary township or other revenue. In case of a vacancy in the office of trustee, the county auditor shall appoint a person to fill the same, who shall take an oath and give bond as required in the last preceding section; and said auditor shall report to the superintendent of public instruction the name and post-office address of each trustee.

1. *Bond does not cover borrowed money.* There is here a clear implication that the only money which a trustee can officially receive is that yielded by the school revenues. Money obtained by borrowing can not be said to be school revenue, and the penalty of the bond does not extend to such money, 75 Ind. 372.

2. *Title to school money.* A trustee, like a county treasurer, is liable on his bond for all money that may come into his hands by virtue of his office, whatever may become of the money. He is not a mere bailee, but the legal technical title to the money in his hands is in himself, 36 Ind. 346.

3. *Use not conversion.* The mere use, by the trustee, of school revenues of the township in his own business, is not such a conversion of the money as constitutes a breach of the conditions of his bond, 78 Ind. 239; 81 Ind. 109.

4. *When not entitled to interest.* Title to such revenues does not vest in a trustee till they are actually drawn by him out of the treasury, and he is not entitled to interest on warrants issued against them, 66 Ind. 271.

5. *Vacancy.* I believe it is considered that a person appointed to fill a vacancy in an office holds such office until his successor is *elected* and *qualified*. The supreme court seem to have so regarded the question. See 73 Ind. 175.—*Baldwin, Atty. Gen.* See § 4440*a*, *note*.

6. *Liability on bond.* See § 4439, *notes* 12 *to* 14. New bond, see § 4420*j*.

[1859, p. 220. Approved and in force February 15, 1859.]

SEC. 4440*a*. County commissioners fill vacancy. All vacancies in the office of township trustee shall be filled by the board doing county business in term time, or by the auditor in vacation; and every trustee so appointed shall continue in office until his successor is elected and qualified. [R. S. 1881, § 5996.]

1. *Section in force.* This section is in force; and where a vacancy occurs when the county commissioners are in regular (and there is no reason why the same is not true when they are in special) session, the county auditor can not fill the vacancy, 113 Ind. 70.

[1883, p. 115. Approved and in force March 6, 1883.]

SEC. 4441. Trustees manage revenues—Reports. 7. The school trustees of every township, incorporated town or city, shall receive the special school revenue belonging thereto, and the revenue for tuition which may be apportioned to his township, town or city, by the State, for tuition or [for] the common schools, and shall pay out the same for the purpose for which such revenues were collected and appropriated. Such trustees shall keep accurate accounts of the receipts and expenditures of such revenues, and shall render to the county commissioners, annually, on the first Monday of August, for the school year ending on the thirty-first day of July, and as much oftener as they may require, a report thereof, in writing. Said board of commissioners shall hold a session on said Monday to receive said reports. They shall clearly and separately state:

First. The amount of special school revenue and of school revenue for tuition on hand at the commencement of the year then ending.

Second. The amount of each kind of revenue received within the year, giving the amount of tuition revenue received at each semi-annual apportionment thereof.

Third. The amount of each kind of revenue paid out and expended within the year.

Fourth. The amount of each kind of revenue on hand at the date of said report, to be carried to the new account,

And shall, with said report, present and file a detailed account current of the receipts and payments for the year, and support the same by proper vouchers; which report and account current shall each be duly verified by affidavit; and when the said county commissioners are satisfied that said report is full, accurate and right, in all respects, and that said account is just and true, they shall allow and pass the same; which shall have the effect to credit the trustee for the expenditures. A copy of said report, as passed and allowed by the county commissioners, shall, within ten days after its date, be filed by the trustee with the county superintendent of the county, and upon failure of the trustee to discharge any of the duties required of him relative to schools and school revenues, the board of county commissioners shall cause suit to be instituted against him, on his official bond, and in case of recovery against him, the court rendering the judgment shall assess upon the amount thereof ten per cent. damages, to be included in said judgment. [El. Sup. § 1273.]

1. *Conversion.* The application, by a trustee, of tuition revenue to special school, road, or civil township purposes is a conversion of so much of the fund and a breach of his bond, 60 Ind. 26; 125 Ind. 427. The suit may be brought on the relation of his successor, 47 Ind. 465; 60 Ind. 26; 75 Ind. 103.

2. *Liability of trustee.* The trustee is absolutely liable for the loss of the funds, by whatever casualty. Depositing in a solvent bank, by advice of State and county superintendent and county board, if loss result, is no defense, 61 Ind. 212.

3. *School board independent.* The school trustees of a city or town act independently of the city council or board of town trustees in receiving and expending the school revenues, and their action can not be controlled by the latter, 64 Ind. 275. But see § 4491.

4. *Officer de facto.* Where trustees have been duly elected, commissioned and qualified, giving the bonds required by law, such bonds will be binding, and although the trustees may be disqualified from holding the office if the question were properly presented, yet funds coming into their hands while acting will be secured by their bonds.—*Woollen, Atty. Gen.*

5. *Mistake in settlement.* When a township trustee fails to keep the accounts required by this section, and by reason thereof, and by reason of mislaying vouchers, he fails in his annual settlement with the county commissioners to claim or receive credit for a certain sum properly paid out by him, he can not afterward recover for the amount so paid, 81 Ind. 69.

6. *Writ of mandate.* Mandamus lies by a school trustee to compel delivery by his predecessor of the records, books and papers of the office, and to compel the payment of money which the trustee is required by law to apply to school purposes, 78 Ind. 269.

7. *Assessment of damages.* In a suit on the bond of a school trustee the court in rendering judgment upon the verdict, should add ten per cent. to the amount found by the jury.—Watson *v.* State, 80 Ind. 212. And the provision to that effect is imperative, 78 Ind. 239.

8. *Making Loans—Anticipating revenues.* The powers of trustees in these particulars have not been generally understood, as is shown by many letters of inquiry received at the department. I have, therefore, tried to give a full exposition of the law on the subject, as follows:

They can not borrow money. There is nothing in the statute from first to last indicating that a township trustee can rightfully obtain money from any other source than the school revenues. There is a plain and unmistakable purpose on the part of the legislature to confine the trustee to the funds expressly

provided, and not permit him to go out into the business world as a borrower. * * * The money is supplied to them, and they must take it as supplied, and not attempt to devise or create other sources of supply, 75 Ind. 368.

Are liable for money had and received. Where money is loaned to a township trustee for the use and benefit of the school township represented by him, and the school township receives the benefit of the money, it is liable therefor; and, though the note of the trustee attempting to bind the township for the loan he held void, yet the liability of the township remains as for money had and received, 73 Ind. 501; 75 Ind. 361.

May execute notes for debts. A school township, by and in the name of its trustee, may execute a valid negotiable promissory note for any debt contracted for the benefit of its property; but it is not governed by the law merchant, and an assignee takes it subject to all defenses, 56 Ind. 157 [26 N. E. Rep. 567]. The board of school trustees of an incorporated town have power to execute a valid negotiable promissory note, by and in the name of such trustees, binding upon the school corporation for any debt contracted for the benefit of its property, 72 Ind. 91. A note executed by a school trustee and given in payment for certain school maps was held to bind the school corporation, 74 Ind. 93. The same was true of a note given for dictionaries, 59 Ind. 534; and for school furniture, 81 Ind. 515. But school trustees have no power to bind their corporations by notes given for money borrowed, 75 Ind. 368. *May anticipate certain revenues.* The only portion of the school revenues which the school trustees may not expend in anticipation is the school revenue for tuition belonging to the State and by it apportioned, 30 Ind. 178. But this is very far from deciding that money may be borrowed by the trustee, 75 Ind. 368. *When may issue bonds.* A township trustee, in case of a bequest or gift exceeding five thousand dollars, to an unincorporated town in his township, conditioned upon the raising of a like sum by the citizens of the township, may, upon petition of a majority of the legal voters thereof, issue and sell the bonds of the township to an amount not exceeding fifteen thousand dollars, § 4514. School bonds of cities and incorporated towns are issued by the common council or board of town trustees, but in no case by the school board, § 4488. *Conclusion.* The conclusion, from a careful comparison of the authorities, is that school trustees have no power to borrow money, but they may bind their corporations by promissory notes for the payment in future of valid pre-existing debts, or for the repayment of money advanced to liquidate such debts. The act of March 11, 1875 (R. S. 1881, §§ 6006 to 6008), applies to trustees of *civil*, not school, townships. The indebtedness of all corporations is limited by the constitution (§ 220), to two per cent. on the value of taxable property.—*Holcombe, Supt.* See § 4444, *note* 24.

9. *Penalties.* See § 4451 and 4452. The court, in an action on the trustee's bond, assesses ten per cent. penalty, if there is a recovery, 69 Ind. 430; 110 Ind. 472. See § 4439, *note* 14.

10. *Right of new town to part of township school funds.* Where money has been apportioned to a school township and received by the trustee thereof, and a town within such township is afterward organized before he has used such school fund for school purposes, he may be compelled by mandate to pay over the proportionate share to which the town is entitled; and the school trustees of the town are the proper relators in such suit. In such a proceeding the validity of the town incorporation proceedings can not be attacked. 89 Ind. 249.

11. *Sessions of board of commissioners.* The sessions of the board of county commissioners under this section are held for the sole purpose of receiving from the school trustees the reports therein provided for and taking action thereon, and the board has no power to transact any other business during the session, 101 Ind. 167; 107 Ind. 15.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4442. Record—Duty as to revenue. 8. The trustees shall keep a record of their proceedings relative to the schools, including all orders and allowances on account thereof; including, also,

accounts of all receipts and expenditures of school revenue, distinguishing between the special school revenue belonging to their township, town, or city, and the school revenue for tuition which belongs to the State, and by it apportioned to their township, town or city; which said revenue for tuition they shall not permit to be expended for any other purpose, not even for that purpose in advance of its apportionment to their respective corporations.

1. This restriction upon spending money in advance does not apply to money raised under §§ 4469 and 4470, 30 Ind. 178.

2. *Tuition revenue.* From the various provisions of the law upon this subject it is understood that no portion of this money can be lawfully applied to any other purpose than the payment of the wages of teachers in the common schools of the State. It can not be used to pay fees to the county auditor, or treasurer, or township trustee, or superintendent of a graded school, or a janitor, or a librarian, or for fuel, furniture or repairs.—*Rugg, Supt.*

3. *Embezzlement.* The application of money belonging to one fund to the use of another is a criminal offense, the punishment for which is imprisonment in the State's prison for not less than one nor more than five years, a fine of not less than one nor more than one thousand dollars and disfranchisement, and incapacity to hold any office of profit and trust, R. S. 1881, § 1951; see § 4441, *note* 1; § 4438, *note* 7, and § 4439, *note* 12.

4. *Misdemeanor.* If any township trustee shall refuse to pay any just claim or demand against any fund of said township, when the money belonging to said fund is in his hands, he shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than ten dollars and not exceeding fifty dollars, R. S. 1881, § 2050.

Sec. 4443. Annual statement. 9. The township trustees and the school trustees of incorporated towns and cities shall, immediately after their annual settlements with the county commissioners, in October [August], make a full statement of all their receipts and expenditures, for the year preceding, relative to their schools.

1. The time for making the annual settlement with commissioners was changed in 1883 from October to August, § 4441.

2. *Civil and school townships.* The conclusion is inevitable that every township trustee must make a report within five days after the last Saturday of each February, and that such report must contain a statement of all the receipts and expenditures of all the revenues of the *civil* township, R. S. 1881, § 5998, but it need not contain a report of the receipts and expenditures of the *school* revenue of the township, *unless* the board of county commissioners require it. On the first Monday after the second Tuesday in October [now the first Monday of August] every township trustee must make a report of all the receipts and expenditures of the school revenue of his township, but not of the receipts and expenditures of the *civil* township.—*Baldwin, Atty. Gen.*

Sec. 4444. General duties. 10. The trustees shall take charge of the educational affairs of their respective townships, towns, and cities. They shall employ teachers; establish and locate, conveniently, a sufficient number of schools for the education of the white children therein; and build, or otherwise provide, suitable houses, furniture, apparatus, and other articles and educational appliances necessary for the thorough organization and efficient management of said schools. They may also establish graded schools, or such modifications of them as may be practicable; and provide for admitting into the higher departments of the graded

school, from the primary schools of their townships, such pupils as are sufficiently advanced for such admission. They shall have the care and management of all property, real and personal, belonging to their respective corporations for common school purposes, except the congressional township school lands; which lands shall be under the care and management of the trustee of the civil township to which such lands belong.

1. *Power of trustee.* The township trustee is clothed with almost autocratic power in all school matters. The voters and tax-payers of the township have but little, if indeed any, voice or part in the control of the details of educational affairs. So far as actual authority is concerned, the trustee is the corporation, although in contemplation of law it is otherwise, Tp. 75 Ind. 374; Tp. 73 Ind. 501.

2. *Patrons can not designate teachers.* There is no provision of the law authorizing any other person than the trustee to select a teacher. It is therefore held that the provision authorizing the trustee to employ teachers, also authorizes him to select them, and that school meetings are not empowered by the law to designate or employ teachers. That power was taken from them in 1873. In some townships the trustees by courtesy permit the voters of districts to select their respective teachers. I doubt their right to do so. The law wisely holds the trustees responsible for the faithful performance of this duty. He is bound to obtain the best teachers that his money will secure. He has no right to employ a poor teacher when his money will control the services of a good one. He has certainly no right, then, to put it out of his power to thus use his best judgment in the selection.—*Smart, Supt.*

3. *County can not build school-house.* A board of county commissioners has no authority to make an appropriation of any sum out of the general fund of their county for the erection of a school building, 55 Ind. 334.

4. *Abandoned corporation.* In case a town abandons its corporation, the powers and duties of the board of school trustees cease, the township trustee succeeds thereto, and it becomes his duty to take charge of the schools without special notice.—*Baldwin, Atty. Gen.*

5. *Trustee can not employ himself.* You ask me whether a township trustee has a right to teach school in his own township. In answer, I have to say that a township trustee, being the agent of the State to employ teachers for the public schools, is not authorized to employ himself, and such a practice, if it exists, is contrary to law, and should be discontinued.—*Woollen, Atty. Gen.* See 25 Wis. 551; 94 Ill. 528; 14 Mich. 477.

6. *Contracts with teachers.* A teacher contracts with the school township through its trustee, and although the trustee squanders the township funds and his bond is worthless, yet the township is liable to pay the teacher as specified in the contract. A verbal contract with a school trustee to teach a school is as binding as a written contract. If the trustee had employed a teacher for the term or school year before the patrons of that district had petitioned him to have the German language taught in that district, then he was justified in paying no attention to their petition.—*Baldwin, Atty. Gen.* But an outgoing board or trustee may employ teachers that will serve under their successors. See § 4439, *note* 13.

7. *When contracts may be made.* It would be detrimental to the public interests to permit retiring officers to bind their successors in the matter of employing teachers for the succeeding year, as they might foist upon them persons that were highly objectionable, and thus destroy that harmony which should exist between employers and employes. As there seems to be no necessity for earlier action, I think the teachers should be employed by the trustees who are required to manage the schools during the school year.—*Woollen, Atty. Gen.*

8. *Resignation of teacher.* The relation existing between trustee and teacher is based on a contract. A teacher can not resign without the consent of the trustee. To abandon his school without such consent is a violation of his

contract, and gives the trustee a claim against him for any damages actually sustained by the school in consequence thereof. But the trustee will withhold any part of the wages due the teacher at his peril, for unless actual damages can be proved the teacher may recover in a suit the amount withheld.—*Holcombe, Supt.*

9. *Location of houses—Title.* The title to property on which a school-house is to be built must be in the school corporation; and by proper proceedings land may be condemned for school purposes, §§ 4508, 4517–4519. Trustees must not build outside their own jurisdiction, since the franchises of a school corporation can not extend beyond its own territory so as to attach to land or school buildings outside the corporate limits, 66 Ind. 521. I do not think the law authorizes a trustee to invest township funds in a *joint stock company* for the construction of a school-house. But he may, having a deed for the land on which the school-house stands, build one or more rooms or stories of such house, permitting other parties, or a joint stock company, to build additional rooms or stories thereto, upon such conditions as will secure the protection and right use of that part owned by the township.—*Hopkins, Supt.* [Very doubtful. See § 4499, *note* 7.] A school meeting of a district may petition the trustee for the *removal* of the school-house to a more convenient location, for the erection of a new one, etc., but the trustee may exercise a sound discretion as to the propriety of taking such action, § 4499.

10. *Providing houses, furniture, etc.* The school authorities are not bound to furnish educational facilities beyond those which the funds devoted by law to that purpose will yield. It is not for them to burden the school township with debt by borrowing money. Their duty is fully performed and their power completely exhausted when they have properly expended all money derived from the school revenue, 75 Ind. 375. But where money had been loaned to a township trustee for the purpose of completing a needed and suitable school house, the school township receiving the benefit of the loan was held to be liable therefor, 73 Ind. 501; see § 4441, *note* 8, and § 4437, *notes* 5, 9, 10, 12, 13 and 15.

11. *Poor children furnished books.* The trustee can not purchase textbooks and the like for poor and indigent pupils, 119 Ind. 213. But under certain circumstances they may be supplied with them. See §§ 4496*a* and 4496*b*.

12. *Indispensable articles.* Among the indispensable articles furniture and apparatus are a few chairs, a teacher's table, black-boards and crayons, a clock, a thermometer, a dictionary, a water-pail and cups, pointers, erasers, brooms and brushes. Each school should also be furnished with a terrestrial globe and suitable wall maps, and there should be a closet in which the movable property of the school may be secured.—*Smart, Supt.* The trustees are, under the law, the judges whether furniture is needed; and contracts therefor, and in consideration of the purchase of maps and dictionaries, will bind the corporation, 74 Ind. 93; 81 *id.* 515; 59 *id.* 534.

13. *Contracts of trustees.* Contracts for the benefit of school corporations, whether to build houses, employ teachers or purchase supplies or apparatus, should be made by the trustee in the name of the school, not the civil, corporation, 69 Ind. 102; 67 *id.* 380. A school town is bound, as such, for the contract price of material furnished and labor performed by another, in the erection of a school building for such town, under a parol contract therefor, made with him by the school trustees of such town, but a *mechanic's lien* can not be taken upon the building for materials furnished therefor and labor performed thereupon, 102 Ind. 223. A suit to set aside a contract for the building of a school-house and to enjoin the doing of the work, on the ground of *fraud* on the part of the township trustee, in the making of the contract, is properly brought in the name of the State, for the use of the civil township, 27 Ind. 110. A contract by a school trustee for the improvement of school property, by the terms of which he is to share in the profits is void, both at common law and under the statute, 59 Ind. 520. The penalty for such corrupt interest in contracts is a fine of from three hundred to one thousand dollars, and imprisonment for from two to fourteen years. R. S. 1881, § 2049.

14. *Graded schools.* This section gives the trustees ample power to organize, at their discretion, such a system of free schools as the peculiar circumstances of their townships may require. The schools may be all of the same grade, or

of two or three or more grades. They may classify the children of the township according to acquirements. They may authorize the teaching of any branches of science, literature and art which public interest and public opinion may require.—*Larrabee, Supt.* The separation of pupils into different schools or departments, according to age and acquirements, is not an abridgment of their rights, 48 Ind, 360. A graded school is a school in which the pupils are placed in different rooms and under different teachers, according to advancement. Consequently, the greater the number of rooms and teachers for any given school the more favorable the means for perfect grading. From this it will be seen that a graded school as contemplated in the above section can not exist with less than two teachers. With one the school may be classified but not graded. Trustees will therefore have regard to this element when they put up buildings designed for graded schools. 2d, As to the time when a graded school should be established for any given township, no definite directions can be given. There are too many local elements to admit of any special directions. It is, however, safe to say that whenever there are pupils in the township whose advancement is such that the district schools can not furnish them instruction, at that moment begins the need of a township graded school, furnishing instruction of a higher grade. The trustee must, however, be satisfied that the number of such pupils is sufficient to justify the establishment of such a school before providing the same. 3d, As to place, I would suggest that whenever practicable the township graded school should be established in connection with a district school, thus economizing in building, perhaps in teaching, also furnishing the means of a more thorough grading in at least one primary school in the township. It is suggested further that a village, if centrally located, is usually a favorable place for the township school.—*Hoss, Supt.*

15. *Pay of graded-school teachers.* A township graded school is a common school, as it is open alike to all the children of the township who are sufficiently qualified for admission [30 Mich. 69; 92 Ill. 612; S. C. 34 Am. Rep. 151; 97 Ill. 375; 4 Dill, 148]. Therefore township trustees have the right to pay principals and teachers of graded schools for all service which they render as teachers in such schools, from the school revenue for tuition apportioned by the State.—*Smart, Supt.*

16. *Custody of school property.* The trustee of each school district has charge and possession of the school-house, for although the director has the charge for certain purposes, he acts under the order and with the concurrence of the trustee, 48 Ind. 148; § 4504.

17. *Care of premises.* In employing teachers the trustees should bind them by contract to a strict care of all school property under their charge. Teachers can do much in this matter by direct supervision, and perhaps more by the inculcation of proper sentiments in the minds of their pupils. § 4504 provides that the director shall, under the general order and concurrence of the trustee, take charge of the school-house and the property belonging thereto. This may be made an efficient means in the preservation of property. To this end, however, the trustee and director should distinctly understand each other, each knowing definitely the portion of this work which falls to him. This can only be done by conference, hence it is suggested that trustees occasionally call the directors together for consultation on this and other school matters. This done, each officer will understand the exact duties assigned him, and it is hoped he will hold himself responsible for the prompt and full discharge of the same, especially so in reference to the care and preservation of school property.—*Hoss, Supt.* The teacher can be required to exercise care in locking the school-house and out-houses, and making them as secure against injury as possible whenever he leaves the premises, but can not be held responsible for damages occurring during his absence from the premises or when they are not under his control, as when occupied by other persons with the trustee's permission.—*Holcombe, Supt.*

18. *Congressional lands.* When these lands are divided by a county or civil township line, the voters of the congressional township to which they belong shall designate the trustee of one of the civil townships in which they lie to have the care and management of them, § 4330.

19. *Borrowing money — Executing notes — Liability of corporation.* A trustee of a school corporation has no authority to borrow money. He has no authority to incur any indebtedness except for school purposes, and then only in cases contemplated by statute. He has no general authority to execute promissory notes; his authority in this respect is a special one, and can only be exercised in conformity to the statute creating the corporation. The authority to execute promissory notes is confined to cases where the debt which the note evidences is for legitimate school purposes. * * * The cases very clearly establish the principle that the corporation is only liable on an implied contract, and not on the notes, and such a contract can not exist unless it is shown that the school corporation received the consideration of the notes. * * * The authorities all agree that an implied contract only exists in cases where the defendant received the consideration of the contract, and where this appears, and only where it appears, he is liable for the reasonable value of the property received, 98 Ind. 497; 26 N. E. Rep. 567.

20. *Orders without consideration void.* Where the trustee of a school township has issued an order or certificate of indebtedness, in the name of his township, without any consideration therefor, such order or certificate is invalid and void and can not be enforced against the township, nor in such cases will the acts, conduct, or promises of the trustee, or his successors in office, estop the township from pleading the want of consideration as a sufficient defense to any suit against it upon such order or certificate, 90 Ind. 101.

21. *May abolish districts.* After a school trustee has, on appeal, been ordered by the county superintendent to provide furniture for the school-house of a certain district, he may at once abolish the district and provide proper school facilities for the people thereof in other districts, 90 Ind. 123.

22. *Must control school premises.* A school trustee has no authority to provide furniture for a room for school purposes, or to employ a teacher for service therein, unless such room is owned or leased by the school township. 90 Ind. 123.

23. *Petition for school-house—Appeal—Mandate.* Any portion of the inhabitants of a township may petition the trustee for the location of an additional school-house, and if he refuse the prayer of the petition they may appeal to the county superintendent; and if he reverse the decision of the trustee it will be the duty of the latter to grant the prayer of the petition, and if he still refuse, he may be compelled to do so by mandate, 21 Ind. 317; § 4499, *notes* 6 *and* 7. See § 4500.

24. *Future supplies.* A township is not liable upon a certificate issued by its trustee for school supplies contracted for by him for future delivery, which supplies, although suitable, are not needed in the township schools, and which the township refuses to accept, 114 Ind. 210. See § 4441, *note* 8.

25. *Mechanic's lien.* A mechanic's lien for work done or material furnished, in the erection of a public school-house, can not be acquired nor enforced, 102 Ind. 223 (overruling 17 Ind. 225).

26. *Discontinuing schools.* A trustee may discontinue a school whenever he, in good faith, believes its continuance not warranted, and a failure to make a record of his action at the time it was made is not a material matter, 119 Ind. 232.

[1873, p. 68. Approved and in force March 8, 1873.]

SEC. 4445. Superintendent in cities and towns. 12. The school trustees of incorporated towns and cities shall have power to employ a superintendent for their schools (whose salary shall be paid from the special school revenue), and to prescribe his duties, and to direct in the discharge of the same.

1. *Compensation.* In case a person is employed to superintend part of the time and teach part of the time, he can be paid for the services he renders as superintendent out of the special revenue, and for the services he renders as teacher out of the tuition revenue. If paid anything from the latter, he must possess a valid license.—*Smart, Supt.*

2. *Outgoing board.* The outgoing board may employ a superintendent for the year following, and which will be covered by the incoming board, 106 Ind. 478.

SEC. 4446. Joint graded schools. 13. The school trustees of two or more distinct municipal corporations for school purposes shall have power to establish joint graded schools, or such modifications of them as may be practicable, and provide for admitting into the higher departments of their graded schools, from the primary schools of their corporations, such pupils as are sufficiently advanced for such admission. Said trustees shall have the care and management of such graded schools, and they shall select the teachers therefor. They shall have power to purchase suitable grounds for such graded schools and erect suitable buildings thereon; and the title to all such property, acquired for such purposes, shall vest jointly in the corporations establishing the graded schools.

1. *Joint graded schools—Appeal.* An incorporated town and township can unite and establish a joint graded school, and it will not be necessary for the town to extend its limits so as to enclose the situs of the school-house. The town and township authorities have no power to enter into an agreement with an incorporated association for school purposes, that the three shall run and control one school, and that such association shall have equal control over the school with such town and township authorities. The control of the public school can not be fettered by any private person. Possibly an appeal will lie from the decision of two township trustees refusing to build a joint graded school-house. In case two township trustees of different counties are petitioned to build such a school-house, the superintendent of that county to whom an appeal is first taken would have jurisdiction of the case to the exclusion of the superintendent of the other county. It is a new question, but this is my best judgment in the matter.—*Baldwin, Atty. Gen.*

2. *Management and supervision.* A joint graded school, as to its management and teachers, is subject to the same laws, rules, and regulations as township graded schools [4444, *notes* 14, 15], except that it is under the *joint* management of the school trustees of *both* corporations. But the teachers should attend the institutes of the county and township in which the school is situated, and should be under the supervision of the superintendent of that county.—*Smart, Supt.*

3. *Proportional contributions.* While the section that provides for the establishment of joint graded schools by two or more distinct corporations is silent as to the proportion in which each shall contribute to the expense, yet I am of opinion that their contributions should be in proportion to the number of pupils they will each send to the new school. Such is the rule in the case of joint district schools [§ 4513], and I think the same reasons apply to joint schools of all kinds.—*Holcombe, Supt.*

4. Under this section trustees of two or more school townships may organize a joint graded school, and purchase suitable real estate therefor; and such trustees are the sole judges of the right to purchase property of this character. They may give the townships' notes therefor; and, in a suit on such notes, no inquiry can be made, in the absence of fraud between the seller and the trustees, as to whether such ground was suitable or proper, 124 Ind. 72.

5. The trustees act as individual trustees, and do not as a unit represent their respective school corporations. A majority of the whole board of trustees, whether such majority come from one corporation entirely, or from the different corporations interested, have the power to transact any and all business, including the employment of teachers, relating to such joint graded school, 125 Ind. 557; 26 N. E. Rep. 872.

[1877, p. 18. Approved and in force March 3, 1877.]

SEC. 4447. Surplus special school revenue in cities and towns. 1. The board of school trustees of any city or incorporated town in this State is hereby authorized and empowered to pay over to the common council or board of trustees of such city or town any surplus special school revenue in the hands of such school trustees, not necessary to meet current expenses—such excess of the revenue, aforesaid, to be applied to the payment of the interest or principal, or both, of any indebtedness incurred under the provisions of the act of March 8, 1873, authorizing cities and incorporated towns to negotiate and sell bonds to procure means to erect and complete unfinished school buildings, and to purchase any ground and building for school purposes, and to pay debts contracted for the erection, completion, and purchase of buildings and grounds. [§§ 4488 to 4490.]

See § 4492.

SEC. 4448. Things legalized. 2. Where the excess of special school revenue not necessary to meet the current demand upon such revenue shall have been, prior to the passage of this act, loaned, paid over, or applied, as provided in the preceding section, such loan, payment, or application of such moneys, is hereby legalized and made valid, as fully and completely as if this act had been in full force and effect at the time such transaction took place.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4449. Teacher's reports. 20. To enable the trustees to make reports which are required of them by this act, the teacher of each school, whether in township, town, or city, shall, at the expiration of the term of the school for which such teacher shall have been employed, furnish a complete report to the proper trustee, verified by affidavit, showing the length of the school term, in days; the number of teachers employed, male and female, and their daily compensation; the number of pupils admitted during the term, distinguishing between males and females, and between the ages of six and twenty-one years; the average attendance; books used and branches taught, and the number of pupils engaged in the study of each branch. Until such report shall have been so filed, such trustee shall not pay more than seventy-five per centum of the wages of such teacher, for his or her services.

1. *The report final.* The law requires a teacher to make a report to the trustee at the end of the term for which said teacher shall have been employed-

I think the contemplated report is a final report. It may be at the end of two, three or four months, as the case may be, or at the end of the year. I think that a report made in the middle of a term would not be a final report as contemplated by the law, unless the teacher at that time severed his connection with the schools.—*Smart, Supt.*

2. *Teachers excused, when.* If the school authorities fail to furnish a building in which to teach the school, or refuse to furnish a school to be taught, or wrongfully discharge the teacher, such teacher is excused from making a report, 74 Ind. 127.

3. *Withholding wages.* The provision on this subject is designed to give the trustee a means of securing the final report from the teacher. It will generally be sufficient for this purpose to withhold a part or all of the wages of the last month only before the report becomes due. Any other practice would inflict on teachers a hardship which I am persuaded was not intended by the legislature.—*Holcombe, Supt.*

4. *Report obligatory.* Until the teacher has made a report, he can collect only seventy-five per cent. of his wages, 107 Ind. 351.

[1883, p. 118. Approved and in force March 6, 1883.]

Sec. 4450. Trustees' report. 21. The trustees of each township, town, or city shall, annually, on the first Monday of August, make their report for the school year ending on the 31st day of July and furnish to the county superintendent the statistical information obtained from teachers of the schools of their respective townships, towns, or cities, and embody in a tabular form the following additional items: The number of districts; schools taught, and their grades; teachers, males and females; average compensation of each grade; balance of tuition revenue on hand at the commencement of the current year; amount received during the year from the county treasurer, and amount expended within the year for tuition; and balance on hand; length of school taught within the year, in days; school-houses erected during the year; the cost of the same; the number and kind before erected, and the estimated value thereof, and of all other school property; number of volumes in the library and the number taken out during the year ending the 31st day of July; also the number of volumes added thereto; assessment on each one hundred dollars of taxable property, and on each poll of special tax for school-house erection, and amount of such levy; balance of special school revenue on hand at the commencement of the current year; amount received during the year from the county treasurer; the amount of said revenue expended during the year, and balance on hand; the number of acres of unsold congressional school lands, the value thereof, and the income therefrom; together with such other information as may be called for by the county superintendent and the superintendent of public instruction. [El. Sup. § 1273.]

1. *Amendments.* The amendment of this section, and of §§ 4431 and 4441, is due to the recommendation of State Supt. John M. Bloss, and is a very beneficial measure. Heretofore trustees made their annual reports of receipts and expenditures of school revenues to the county superintendent on September 1st, and to the county commissioners early in October (§ 4441), in each case for the year then ending. The result was great confusion between the two reports,

rendering accuracy almost impossible. The amendment of the sections gives a standard year for all financial and statistical reports of school trustees. The state superintendent's report for 1882 (John M. Bloss) contains, on pages 123–133, an instructive accocnt of this matter.

See § 4431, 4441 and 4451.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4451. Failure to report. 22. On failure of any trustee to make either the statistical report required by the last preceding section, or the report of the enumeration required by the sixteenth section of this act [§ 4473], or the report of finances required by the seventh section of this act [§ 4441], to the county superintendent, at the time, and in the manner specified for each of said reports, the county superintendent to whom such reports are due shall, within one week of the time the next semi-annual apportionment is to be made by the auditor of the county, notify said auditor, in writing, of any such failure; and the auditor shall diminish the apportionment of said township, town or city by the sum of twenty-five dollars, and withhold from the delinquent trustee the warrant for the money apportioned to his township, town or city, until such delinquent report is duly made and filed. For said twenty-five dollars, and any additional damages which the township, town or city may sustain, by reason of stopping said money, such trustee shall be liable on his bond, for which the county commissioners may sue.

Sec. 4452. Neglecting Duties. 23. If a trustee shall fail to discharge any of the duties of his office relative to the schools, any person may maintain an action against him for every such offense, in the name of the State of Indiana, and may recover, for the use of the common school fund, any sum not exceeding ten dollars; which sum, when collected, shall be paid into the county treasury, and added by the county auditor to said fund, and reported accordingly.

Sec. 4453. Failing to serve. 24. Any person elected or appointed such trustee, who shall fail to qualify and serve as such, shall pay the sum of five dollars, to be recovered as specified in the preceding section for the use therein named, and in like manner added to said fund, unless such person shall have previously served as such trustee.

Sec. 4454. Trustee's accounts. 141. The books, papers, and accounts of any trustee, relative to schools, shall at all times be subject to the inspection of the county superintendent, the county auditor, and the board of county commissioners of the proper county.

Sec. 4455. Examination of trustee and his books. 142. For the purpose of such inspection, said county superintendent, auditor, and board of county commissioners may, by subpœna, summon

before them any trustee, and require the production of such books, papers and accounts, three days' notice of the time to appear and produce them being given.

SEC. 4456. Correction of accounts—Removal. 143. If any such books and accounts have been imperfectly kept, said board of commissioners may correct them, and, if fraud appear, shall remove the person guilty thereof.

Only the board of commissioners can correct the trustee's books. The county superintendent has no power to make or order corrections on his own responsibility, but may direct and assist trustees in keeping their accounts and securing accuracy, and for such labor he is entitled to compensation.—*Holcombe, Supt.*

[1871, p. 20. Approved and in force March 3, 1871.]

SEC. 4457. School system in large cities. 1. In all cities of this State of thirty thousand or more inhabitants according to the United States census for the year eighteen hundred and seventy, there shall be elected, by the qualified electors of each school district of such city, one school commissioner, to serve as a member of the board of school commissioners of such city. The first regular election for school commissioners, under this act, shall be held on the second Saturday in June, in the year eighteen hundred and seventy-one, at the places to be fixed on for holding such election in the school districts of such city by the common council. All elections for school commissioners shall be held in the same manner as elections are now held, and shall be governed by the same laws that now govern general and municipal elections. The persons declared elected shall have issued to them, by the city clerk, certificates of election; and they shall, within ten days thereafter, take an oath of office, and file the same with the city clerk. All regular elections for school commissioners shall, thereafter, be held annually, on the second Saturday in June.

SEC. 4458. School districts. 2. It is hereby made the duty of the common council of any such city, on or before the first Monday in May, 1871, by ordinance, to district the city into as many school districts as there are wards, and to define the boundaries of each district, and such boundaries may be the present ward boundaries, or otherwise, as the common council may determine. Such school districts shall, however, be subject to change by the board of school commissioners at any time after its organization; and in case the number of districts is increased, each additional district shall be entitled to elect one school commissioner for such district at the annual election for school commissioners. The common council shall, at the time such ordinance is adopted creating such districts, order an election to be held in each of such districts, for school commissioners thereof, on the second Saturday in June following; and shall direct the city clerk to give ten days' notice thereof in some daily newspaper of such city.

Sec. 4459. Organization—Term—Vacancies. 3. On the first Monday in July following the first election of school commissioners herein provided for, such school commissioners shall assemble at the office of the board of school trustees of such city, and proceed to organize the board of school commissioners of such city, by electing one of their number as a president, one of their number as a treasurer, and one of their number as a secretary; each of which officers shall serve for one year and until his successor is elected and qualified. The members of such board of school commissioners shall then determine, by lot, which three of their number shall hold office for three years, and which three shall hold office for two years; and, after having so determined, the president of the board shall issue to the persons so determined, certificates entitling them to hold office for the terms respectively allotted; and the remaining members shall receive, from the president of the board, certificates showing that each is entitled to hold office for one year; and all persons elected as school commissioners at the annual elections thereafter shall be entitled to hold office for three years each. All vacancies occurring at any time prior to the annual election shall be filled by a ballot vote of a majority of the members of such board; and the persons so elected to fill such vacancies shall serve until the next annual election for school commissioners. All persons elected at any regular annual election, or by the board to fill any vacancy, shall serve until their successors are elected and qualified. It is hereby made the duty of the board of school trustees in office at the time of the organization of the board of school commissioners, to at once turn over to the board of school commissioners all books and papers pertaining to their trust, and to place in possession of the board of school commissioners all moneys, title papers, and property belonging to the school trustees of common schools of such city; and such board of school trustees shall thereafter cease to perform any and all duties whatever connected with the schools of such city.

Sec. 4460. Duties and powers. 4. Such board of school commissioners is hereby authorized—

First. To district the city for the purpose of electing school commissioners therein, and also to subdivide the city for general school purposes.

Second. To levy all taxes for the support of the schools within such city, including such taxes as may be required for paying teachers, in addition to the taxes now authorized to be levied by the general assembly of this State by the general laws thereof: *Provided*, No such tax levy, in any one year, shall exceed the sum of twenty-five cents on each one hundred dollars of the taxable property, as assessed for city taxes by the city assessor, for purchasing grounds, building school-houses, and furnishing supplies for such buildings; or twenty-five cents on each one hundred

dollars of such taxable property, for the purpose of paying teachers.

Third. To levy a tax, each year, of not exceeding one-fifth of one mill on each dollar of taxable property assessed for city taxes by the city assessor, for the support of free libraries in connection with the common schools of such city; and to disburse any and all revenue raised by such tax levy in the purchase of books for, and in the fitting up of suitable rooms for, such libraries, and for salaries to librarians; also to make and enforce such regulations as they may deem necessary for the taking out from and returning to, and for the proper care of all books belonging to, such libraries, and to prescribe penalties for the violation of such regulations.

Fourth. To examine, either by a committee of such board of school commissioners or by an officer of such board, selected for that purpose, all teachers applying for positions in the schools of the city; and to license such as may be qualified—such license to be limited to the city in which the same is granted.

Fifth. To purchase grounds, construct school buildings, purchase supplies, employ and pay teachers, appoint superintendents, and disburse, through the treasurer of the board of school commissioners, moneys for all school and library expenses.

Sixth. To require the treasurer of the board of school commissioners to give bond in such sum, and with such surety as the board may determine, for the faithful discharge of his duties, and for the safe-keeping and faithful accounting for all moneys that may come into his hands as such treasurer.

Seventh. To establish and enforce regulations for the grading of and course of instruction in the schools of the city, and for the government and discipline of such schools.

Eighth. To prepare, issue, and sell bonds to secure loans, not exceeding in the aggregate the sum of one hundred thousand dollars, in anticipation of the revenue, for building school-houses, to bear such rate of interest, not exceeding ten per cent. per annum, and payable at such time, within five years from date, as the board may determine; and the money obtained as a loan on any such bonds shall be disbursed by order of such board, in payment of expenses incurred in building school-houses: *Provided*, That until all the bonds of any one issue shall have been redeemed, such board shall not be authorized to make another issue; nor shall any such bonds be sold at a less rate than ninety-five cents on the dollar.

1. *Can not levy poll tax.* The board of school commissioners has no power to levy a poll tax for the support of the common schools of the city, or for a special fund for the support of such schools, 84 Ind. 67.

2. *School-houses—Promissory notes.* Under the fifth subdivision the school commissioners may contract for the erection and completion of school-houses, and they are authorized thereby to agree to pay partly in cash and partly on time, and to make and deliver their promissory notes for the deferred payments, which are valid obligations and binding upon the school corporation, notwithstanding the fact that there may be at the time outstanding bonds

to the amount of $100,000, issued and sold under the eighth clause of the above section, to secure loans in anticipation of the revenue, for building schoolhouses, and that such money had been disbursed for that purpose, 102 Ind. 223.

3. *Powers under fifth clause.* The powers conferred under the fifth clause are limited only by the educational wants of the school corporation under the board's control, in the exercise of a sound and reasonable discretion, 102 Ind. 223.

4. *Eighth clause.* This clause was not intended to be and is not a limitation upon the general powers conferred upon the board of school commissioners by the fifth clause of this section. It confers additional and extraordinary powers not conferred upon school corporations generally, and the proviso therein contained is a limitation only upon the board's exercise of such additional and extraordinary powers, 102 Ind. 223.

5. *Promissory notes.* Promissory notes executed by such board, in settlement of its just debts fairly contracted for the legitimate purposes of the school corporation, do not come within the purview of the eighth clause, or of the proviso thereof, and are valid, 102 Ind. 223.

6. *Levy of taxes.* See Acts 1885, p. 13, § 9.

Sec. 4461. Tax—Collection and payment. 5. All levies of taxes made by order of the board of school commissioners shall be certified by its president and secretary to the city clerk, who shall cause the same to be placed on the tax duplicate against all property assessed for city taxes; and the city treasurer shall collect the same as city taxes are collected, and shall, once in each month, pay over all such taxes so collected to the treasurer of the board of school commissioners of such city. All taxes hereafter collected by the county treasurer for school purposes on levies hereafter made, and all moneys that may be hereafter distributed as part of the common school fund by county officers, to which the common schools of such city shall be entitled, shall be paid over by the county treasurer to the treasurer of the board of school commissioners; and all taxes hereafter collected by the city treasurer on levies heretofore made for school purposes, shall be paid over by such treasurer, once in each month, to the treasurer of the board of school commissioners of such city.

Sec. 4462. Sessions—Record—No pay. 6. The said board of school commissioners shall hold its sessions at such times as it may determine, and shall keep a record of all its proceedings. The members of such board shall serve without any compensation whatever.

Sec. 4463. General school law in force. 8. All parts of the general school laws of this State, not inconsistent herewith, and which may be applicable to the general system of common schools in such city, herein provided for, shall be in full force and effect in such city.

[1877, p. 123. Approved and in force March 3, 1877.]

Sec. 4464. Temporary loans. 1. The board of school commissioners of any city embraced within the provisions of sections 4457

to 4463, may, whenever the funds for the support of the common schools in such city throughout the regular school year shall be insufficient or exhausted, make temporary loans for the support of such schools during such time, and until the receipt of the school revenue of the current year; but no more than is sufficient for such purpose, nor the amount of such revenue for the current year, shall be borrowed at any one time, and no further loan shall be made until such temporary loan shall be paid.

ARTICLE 2*A*—SCHOOL BOOKS.

SEC.

4464*a*. State board of education selects books.
4464*b*. Bids to supply school books.
4464*c*. Opening bids—Prices.
4464*d*. State may publish school books.
4464*e*. State not liable on contracts.
4464*f*. Proclamation by governor.
4464*g*. Furnishing books.
4464*h*. Trustee's reports — Moneys in his hands.
4464*i*. Failure to report—Liability on bond.
4464*j*. Special bond of county superintendents.
4464*k*. Reports to contractor — Liability of contractor.
4464*l*. Excessive charges for books—Penalty.
4464*m*. Embezzlement.
4464*n*. Appropriations—Repeal of laws.
4464*o*. Bids for physiologies, grammars and histories.

SEC.

4464*p*. Board to order books.
4464*q*. Receipt of books—Report of sales.
4464*r*. Books for poor.
4464*s*. Reports when books are paid for.
4464*t*. Appropriation
4464*u*. Failure of trustee to report, penalty.
4464*v*. Special bond of county superintendent.
4464*w*. Report of county superintendent—Penalty for failure to report.
4464*x*. Embezzlement of county superintendent.
4464*y*. Books to be uniform.
4464*z*. Shipment of books — Receipt by trustee.
4464*aa*. Labels for books.
4464*bb*. Distribution of this act.
4464*cc*. This act supplemental to act of 1889.

[1889, p. 74. Became a law by lapse of time without Governor's approval, March 2, 1889.]

SEC. 4464*a*. State board of education selects books. 1. The state board of education shall constitute a board of commissioners for the purpose of making a selection, or procuring the compilation for use in the common schools of the State of Indiana, of a series of text-books in the following branches of study, namely: Spelling, reading, arithmetic, geography, English grammar, physiology, history of the United States, and a graded series of writing-books. The matter contained in the readers shall consist of lessons commencing with the simplest expression of the language, and by a regular gradation, advancing to and including the highest styles of composition both in poetry and prose: *Provided,* That none of said text-books shall contain anything of a partisan or sectarian character: *And, provided further,* That the foregoing books shall be at least equal in size and quality as to matter, material, style of binding and mechanical execution, to the following text-books now in general use, namely: The speller to McGuffey's Spelling-book, the reader to Appleton's Readers, the arithmetic to Ray's New Arithmetic Series, the geographies to the Eclectic Series of Geographies, the grammar to Harvey's Grammar, the physiology to Dalton's Physiology, the history of the United States to Thalheimer's History of the United States, and

the writing-books equal to the Eclectic Copy-books. [El. Sup. § 1289].

This section and those following to § 4464*n* are greatly modified and many of their provisions repealed by the act of 1891, being §§ 4464*o* to 4464*cc*.

Sec. 4464*b*. Bids to supply school books. 2. The said board of commissioners shall, immediately upon the taking effect of this act, advertise for twenty-one consecutive days in two daily papers published in this State, having the largest circulation, and in one newspaper of general circulation in the cities of New York, Philadelphia, Cincinnati, Chicago and St. Louis, that at a time and place to be fixed by said notice, and not later than six months after the first publication thereof, said board will receive sealed proposals on the following:

First. From publishers of school text-books, for furnishing books to the school trustees of the State of Indiana for use in the common schools of this State, as provided in this act, for a term of five years, stating specifically in such bid the price at which each book will be furnished, and accompanying such bid with specimen copies of each and all books proposed to be furnished in such bid.

Second. From authors of school text-books, who have manuscripts of books not published, for prices at which they will sell their manuscript, together with the copyright of such books for use in the public schools of the State of Indiana.

Third. From persons who are willing to undertake the compilation of a book or books, or a series of books, as provided for in section one (1) of this act, the price at which they are willing to undertake such compilation of any or all of such books, to the acceptance and satisfaction of the said board of commissioners: *Provided*, That any and all bids by publishers, herein provided for, must be accompanied by a bond in the penal sum of fifty thousand dollars, with resident freehold surety, to the acceptance and satisfaction of the governor of this State, conditioned that if any contract be awarded to any bidder hereunder, such bidder will enter into a contract to perform the conditions of his bid to the acceptance and satisfaction of said board: *And provided further*, That no bid shall be considered unless the same be accompanied by the affidavit of the bidder that he is in nowise, directly or indirectly, connected with any other publisher or firm who is now bidding for books submitted to such board, nor has any pecuniary interest in any other publisher or firm bidding at the same time, and that he is not a party to any compact, syndicate or other scheme whereby the benefits of competition are denied to the people of this State: *And be it further provided*, That if any competent author or authors shall compile any one or more books of the first order of excellence, and shall offer the same as a free gift to the people of this State, together with the copyright of the same and the right to manufacture and sell such works in the State of Indiana for use

in the public schools, it shall be the duty of such board of commissioners to pay no money for any manuscript or copyright for such book or books on the subject treated of in the manuscript so donated; and such board shall have the right to reject any and all bids, and at their option such board shall have the right to reject any bid as to a part of such books, and to accept the same as to the residue thereof. [El. Sup. § 1290.]

Constitutional. This and the following sections on school books are constitutional, and are not within the constitutional provision directed against monopolies, 122 Ind. 462.

Sec. 4464*c*. Opening bids—Prices. 3. It shall be the duty of such board to meet at the time and place mentioned in such notice, and open and examine all sealed proposals received pursuant to the notice provided for in section two (2) of this act, and it shall be the further duty of such board to make a full, complete and thorough investigation of all such bids or proposals, and to ascertain under which of said proposals or propositions the school books could be furnished to the people of this State for use in the common schools at the lowest price, taking into consideration the size and quality as to matter, material, style of binding and mechanical execution of such books: *Provided, always,* That such board shall not, in any case, contract with any author, publisher or publishers, for the furnishing of any book, manuscript, copyright or books which shall be sold to patrons for use in the public schools of this State at a price above or in excess of the following, which prices shall include all cost and charges for the transportation and delivery to the several county school superintendents in this State, namely: For a spelling-book, ten (10) cents; for a first reader, ten (10) cents; for a second reader, fifteen (15) cents; for a third reader, twenty-five (25) cents; for a fourth reader, thirty (30) cents; for a fifth reader, forty (40) cents; for an arithmetic, intermediate, thirty-five (35) cents; for an arithmetic, complete, forty-five (45) cents; for a geography, elementary, thirty (30) cents; for a geography, complete, seventy-five (75) cents; for an English grammar, elementary, twenty-five (25) cents; for an English grammar, complete, forty (40) cents; for a physiology, thirty-five (35) cents; for a history of the United States, fifty (50) cents; for copy books, each, five (5) cents. [El. Sup. § 1291.]

Sec. 4464*d*. State may publish school books. 4. If, upon the examination of such proposals, it shall be the opinion of such board of commissioners that such books can be furnished cheaper to the patrons for use in the common schools in the State by procuring and causing to be published the manuscript of any or all of such books, it shall be their duty to procure such manuscript and to advertise for sealed proposals for publishing the same, in like manner as hereinbefore provided, and under the same conditions and restrictions. And such contract may be let for the pub-

lication of all of such books, or for any one or more of such books separately; and it shall be the further duty of such board of commissioners to provide, in the contract for the publication of any such manuscript, for the payment by the publisher of the compensation agreed upon between such board and the author or owner of any such manuscript for such manuscript, together with the cost or expense of copyrighting the same. [El. Sup. § 1292.]

Sec. 4464*e*. State not liable on contracts. 5. It shall be a part of the terms and conditions of every contract made in pursuance of this act that the State of Indiana shall not be liable to any contractor hereunder for any sum whatever; but that all such contractors shall receive their pay and compensation solely and exclusively from the proceeds of the sale of the books, as provided for in this act. [El. Sup. § 1293.]

Sec. 4464*f*. Proclamation by governor. 6. As soon as such board shall have entered into any contract for the furnishing of books for use in the public schools of this State, pursuant to the provisions of this act, it shall be the duty of the governor to issue his proclamation announcing such fact to the people of this State. [El. Sup. § 1294.]

Sec. 4464*g*. Furnishing books. 7. When such proclamation shall have been duly issued, it shall be the duty of the school trustees of each and every school corporation in this State, within thirty days thereafter, and at such other times as books may be needed for use in the public schools of their respective corporations, to certify to the county superintendent of their respective counties the number of school text-books provided for in such contract required by the children for use in the schools of their several school corporations. Such county superintendent shall forthwith make such requisition for books as the schools in the said several counties may require upon the state superintendent of public instruction, and that said state superintendent of public instruction shall immediately thereafter make a requisition for said books upon the contractor, who shall within ninety days ship the books so ordered directly to the county school superintendents of the several counties of this State. Upon the receipt of such books it shall be the duty of such county school superintendents to immediately notify all the school trustees of the school corporations as shown by the last school enumeration of their counties of the receipt of such books. It shall then be the duty of such school trustees to immediately procure and take charge and custody of all the books assigned to their several school corporations, receipting therefor to the said county school superintendent; and upon the receipt of such books by said school trustees they shall furnish them on demand to the school patrons or school children of their respective corporations at the price fixed therefor by the contract entered

into between said board of commissioners and said contractor; and it shall be the duty of such school officers to sell such books for cash only; and if they shall sell or dispose of any books other than for the cash price thereof they shall be held personally liable, and liable upon their official bond for the price of such book or books: *Provided,* That any patron or pupil of any school or schools other than the public schools, and also any child between the ages of six and twenty-one years of age, or the parent, guardian or teacher of such child, shall have the right to purchase and receive the books, and at the prices herein named, by payment of the cash price thereof to the school superintendent of any county in this State, and it is hereby made his duty to make requisition upon the contractor for any and all books so ordered and paid for by any such person or persons: *And provided further,* That nothing in this act shall operate to prevent the state board of education, boards of school trustees or boards of school commissioners from devising means and making arrangements for the sale, exchange or other disposition of such books as may be owned by the pupils of schools under their charge at the time of the adoption of books under the provisions of this act. [El. Sup. § 1295.]

Sec. 4464*h*. Trustee's report—Moneys in his hands. 8. At the expiration of three months after the receipt of such books by the county superintendent, and every three months thereafter, it shall be the duty of each school trustee receiving and chargeable with books under the provisions of this act, to make a full and complete report to the county superintendent of the number of books sold and the amount of money received therefor, and the number of books on hand; and at the time of making such report he shall pay over to the county superintendent all moneys received by him or with which he is chargeable, from the sales of books in his hands; which report shall be duly verified by the oath of the party making it. [El. Sup. § 1296.]

1. See § 4464*u*.

2. *Mandatory.* The trustee is bound to make the report enjoined by this section, and is bound to introduce the books supplied under this law, 122 Ind. 464.

Sec. 4464*i*. Failure to report—Liability on bond. 9. If, at the expiration of ten days from the time required by this act for the making of such report of any school superintendent chargeable with books under this act, any such officer shall have failed, neglected or refused to make such report, or turn over any moneys with which he is chargeable, it shall be the duty of the county school superintendent, within fifteen days, to enter suit upon his official bond for an accounting and recovery of any moneys due from him on account of such books with which he is chargeable; and all judgments recovered upon such bonds shall include a reasonable attorney's fee for the attorney prosecuting such suit; and such judgment shall be without relief from valuation or appraise-

ment laws, and shall be without stay of execution. [El. Sup. § 1297.]

See § 4464*u*.

Sec. 4464*j*. Special bond of county superintendents. 10. It shall be the duty of the several county school superintendents of this State, within thirty days from the issuing of the proclamation by the governor, as hereinbefore provided for, and of every county school superintendent hereafter elected, before he enters upon the discharge of his official duties, to enter into a special bond, with at least two freehold sureties of such county, payable to the State of Indiana, conditioned that they will faithfully and honestly perform all the duties required of them by this act, and account for and pay over all moneys that may come into their hands, pursuant to the provisions of this act, in a penal sum which shall be equal in amount to one hundred dollars for every one thousand inhabitants of their respective counties as shown by the last census immediately preceding the giving of such bond, to be approved by the board of commissioners of their respective counties; and upon the failure of any county school superintendent to give such bond, his office shall become immediately vacant, and the board of commissioners of his county shall immediately appoint some competent and suitable person to fill such vacancy for the unexpired term of his office. [El. Sup. § 1298.]

1. See § 4464*v*.

2. *Bond.* Duty to file, and failure to do so, 124 Ind. 145, 554. See § 4424, *note* 21.

Sec. 4464*k*. Reports to contractor—Liability of contractor. 11. It shall be the duty of each county school superintendent in this State, within ten days after the quarterly reports of the school trustees, as hereinbefore provided for, to make a full, true, complete and detailed report to the contractor of all books sold by the several school trustees of his county, and of the number of books in the hands of the trustees of each school corporation, which report shall be accompanied by all cash received by him from the school officers from sales of books by them sold, and which report shall be duly verified by him, and a duplicate thereof shall be filed in the office of the auditor of his county. Upon the failure of any county school superintendent, to make the report and to transmit the cash, as required by this section, a right of action shall immediately accrue to the contractor against the said school superintendent and the sureties upon the bond provided for in this act, for an accounting and for the recovery of any moneys received and not transmitted by him, and for any damages which may have resulted from his neglect or failure to comply with provisions of this act, and any judgment upon any such bond shall include a reasonable fee for the attorney prosecuting such suit, and such judgment shall be without relief from valuation and

appraisement laws and shall be without stay of execution. [El. Sup. § 1299.]

See § 4464*w*.

Sec. 4464*l*. Excessive charge for books—Penalty. 12. Any school trustee charged with the sales of any books under the provisions of this act, who shall directly or indirectly demand or receive any money for any book or books in excess of the contract price, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten nor more than one hundred dollars, to which may be added imprisonment in the county jail for a term not exceeding sixty days. [El. Sup. § 1300.]

Sec. 4464*m*. Embezzlement. 13. Any county school superintendent or trustee of any township or school corporations in this State who shall fraudulently fail or refuse, at the expiration of the term for which he was elected or appointed, or at any time during such term, when legally required by the proper person or authority, to account for and deliver and pay over to such person or persons as may be lawfully entitled to receive the same, all moneys or school books which may have come into his hands by virtue of the provisions of this act, shall be deemed guilty of embezzlement, and upon conviction thereof shall be imprisoned in the state prison for any period not more than five years nor less than one year, and fined in any sum not exceeding one thousand dollars, and rendered incapable of holding any office of trust or profit for any determinate period. [El. Sup. § 1301.]

See § 4464*x*.

Sec. 4464*n*. Appropriations—Repeal of laws. 14. The sum of one thousand dollars is hereby appropriated out of any funds in the state treasury not otherwise appropriated for the purpose of paying the cost and expenses incident to the giving of the notices herein provided for and carrying out the provisions of this act. All laws and parts of laws in conflict with the provisions of this act are hereby repealed. [El. Sup. § 1302.]

See § 4464*l*.

[1891, p. 99. Approved and in force March 5, 1891.]

Sec 4464*o*. Bids for physiologies, grammars and histories. 1. It shall be the duty of the board of commissioners for the purpose of securing for use in the common schools of the State of Indiana of a series of text-books, as constituted by the act of the general assembly in this section mentioned, to immediately advertise for bids, and to act upon such bids as may be submitted for the furnishing for use in the common schools of the State of Indiana of a spelling-book, a primary physiology, a more advanced work on physiology and hygiene, an elementary grammar, a complete grammar, and a history of the United States. In advertising for

such bids, and in acting upon any bid which may be submitted, such board of commissioners shall be governed as far as possible by the same terms, conditions and limitations concerning them, and shall require bidders and contractors to comply with all terms, conditions and limitations concerning bidders or contractors, so far as applicable, as are contained in an act of the general assembly of Indiana, entitled, "An act entitled an act to create a board of commissioners for the purpose of securing for use in the common schools of the State of Indiana of a series of text-books, defining the duties of certain officers therein named with reference thereto, making appropriations therefor, defining certain felonies and misdemeanors, providing penalties for the violation of the provisions of said act, repealing all laws in conflict therewith, and declaring an emergency." Acts of the General Assembly of the State of Indiana, 1889, p. 74: *Provided*, That the standards of physiologies shall be Hutchinson's Laws of Health and Hutchinson's Physiology and Hygiene: *And provided further*, That no bids shall be considered in which the price of a primary physiology shall exceed thirty cents for the volume, or in which a physiology and hygiene shall exceed sixty cents for the volume), or in which a history of the United States shall exceed sixty-five cents for the volume.

See § 4464*a*, *note*.

Sec. 4464*p*. Board to order books. 2. It shall be the duty of the township trustees and school boards of the State, severally, on the first Monday of June in each year, and at such intermediate times as the necessity therefor shall exist, after considering the number and kind of adopted books already sold in the corporation, the number and kind of such books on hand, and ascertaining from their teachers or principal and superintendent, as the case may be, the enrollment of scholars in the different classes or grades of the schools of the corporation, to order such quantities of the books which the State has at that time adopted as may seem to him or it to be necessary for use in the schools of such corporation until the first day of June then next succeeding; the estimate being based upon the information which it is above provided shall be gathered; and on the advice of the county superintendent: *Provided*, That the total orders for any school year of the books adopted heretofore, and those mentioned in section one of this act, shall not exceed the amount of one dollar for each child enumerated for school purposes in the corporation: *And, provided further*, That it shall be the duty of the state superintendent to properly scale down any order for books which may pass through his hands, in case that it shall seem clear to him that such order is for a quantity of books in excess of the needs of the corporation during the period for which such books were ordered.

See § 4464*g*.

Sec. 4464q. Receipt of books—Report of sales. 3. Whenever an order for the books which the State has adopted, or may adopt, shall have been filled by a contractor with the State and the books delivered to the township trustee or school board making such order, it shall be the duty of such trustee or boards to immediately acknowledge the receipt of such books to the contractor, and also to make a report thereof to the county superintendent, and it shall be lawful for any such trustee or school board to at once make payment for such books to the contractor through the superintendent of the county out of any school funds in excess of the needs of their respective townships or school corporations for current expenses or other special needs, in the hands or control of such trustee or board, aside from the principal or interest of the common congressional school fund or the "School Revenue for Tuition:" *Provided, however,* That no debt shall ever be contracted or warrant or other evidence of indebtedness ever be issued by a trustee or board on account of a purchase of books: *And provided further,* That whenever any books are paid for by any trustee or school board, such trustee or school board shall be liable personally and liable upon their official bonds respectively for the preservation, custody and safe-keeping of all such books until the same are sold and accounted for, or otherwise disposed of according to law. Whenever a book paid for as aforesaid is sold by a trustee or school board, it shall be the duty of such trustee or school board to turn the entire proceeds of such sale into the fund, out of which payment was made to the contractor, to reimburse the fund for such advancement. In case a trustee or school board receiving books from a contractor with the State shall not pay for such books, as provided in this section, he, or it, shall make quarterly reports under oath of the sale of such books, accompanied by all cash received therefor, to the county superintendent for transmission to the contractor as now provided by law, until such books shall have been fully paid for. The provisions of this section shall apply to all orders heretofore filed: *Provided,* That if any trustee or board shall have on hands any books heretofore ordered for which he, or it, may have no immediate use, the same shall upon the order of the county superintendent, or the state superintendent of public instruction, be returned to the contractor, or be shipped to such other point as the contractor may direct, the contractor to pay all freight charges on such shipment; and the county superintendent and such trustee or board shall thereupon have credit for such books so returned or shipped.

Sec. 4464r. Books for poor—Pay of trustee. 4. It shall be the duty of each township trustee and each school board to furnish the necessary school books so far as they have been or may be adopted by the State, to all such poor or indigent children as may desire to attend the common schools of his or its corporation, as in his, or its opinion would be otherwise unable to attend such schools:

Provided, That no township trustee in this State shall receive an amount exceeding five dollars as compensation for his services in any one year for duties performed in carrying out the provisions of this act, or the act to which it is supplemental.

Sec. 4464*s*. Reports when books are paid for. 5. When books are fully paid for out of the funds of a school corporation as provided in section three of this act, it shall not be necessary for the township trustee or school board of such corporation to make quarterly reports of the sale of the adopted books, but instead thereof a report shall in all cases be made by him, or it, upon oath on the first Monday of August in each year to the county superintendent, and like report upon oath shall at the same time be made to the board of commissioners of the county, which report shall severally state the number and kind of books on hand at last report; the number and kind sold; the number then on hand; the disposition of the money received on such sales; the amount of money used from any school fund in payment for books received; and the condition of such funds. Such reports shall also state the number and kind of books furnished as provided in section four of this act; for the price of which books so furnished the township trustee or school board furnishing the same shall have credit.

Sec. 4464*t*. Appropriations. 6. The sum of one thousand dollars is hereby appropriated out of the general fund in the state treasury to enable the board of school commissioners mentioned in section one of this act to advertise for bids as in said section provided.

See § 4420*n*.

Sec. 4464*u*. Failure of trustee to report, penalty. 7. Any township trustee or member of a school board, receiving or being in possession of any moneys which at the end of the next quarter should be turned over to the county superintendent to pay a contractor for books sold which have not been paid for out of the funds of the corporation, who shall fail to report the sale of such books at the end of such next quarter, or who shall fail to pay therewith the full proceeds thereof to the county superintendent, or so much thereof as may be necessary to fully pay the contractor, shall be liable, after demand upon him, to a suit on his official bond, brought on the relation of the county superintendent, whose duty it shall be to bring the action for the amount due from him, and damages, if any, and any judgment which shall be rendered in favor of the plaintiff in the action shall contain a reasonable attorney's fee and shall be payable without relief from valuation or appraisement laws. The same liability upon his bond shall accrue against a township trustee or member of a school board who shall refuse to pay over as in this act required any moneys drawn from the funds of his corporation on account of books purchased or who

shall fail to apply all moneys for books sold that have been purchased by the corporation to the reimbursement of the proper fund. Any judgment rendered against a township trustee, school board, or member of a school board because of the non-performance of any duty, shall include a reasonable fee for the plaintiff's attorney.

See § 4464*i*.

SEC. 4464*v*. Special bond of county superintendent. 8. It shall be the duty of each county school superintendent of this State within thirty days from the taking effect of this act, and of each county school superintendent hereafter elected, before he enters upon the discharge of his official duties to execute a special bond with at least two freehold sureties of his county, payable to the State of Indiana, conditioned that he will faithfully and honestly perform all the duties required of him by law, and account for and pay over all moneys which may come into his hands pursuant to law, in a penal sum which shall be equal to one hundred dollars for every thousand inhabitants of his county, as shown by the last census immediately preceding the giving of such bond, which bond shall be executed to the approval of the board of commissioners of his county, and upon failure of any county school superintendent to give such bond, his office shall become immediately vacant and the board of commissioners of his county shall immediately appoint some competent and suitable person to fill such vacancy for the unexpired term of his office.

See § 4464*j*, *note*.

SEC. 4464*w*. Report of county superintendent—Penalty for failure to report. 9. It shall be the duty of such county school superintendent within ten days after the receipt of any report, or money from a township trustee or school board as hereinbefore provided for, to make a full, true, complete and detailed report thereof to the contractor, which report shall be accompanied by all cash received by him from the school officers. The report above provided for shall be duly sworn to by the county superintendent and a duplicate thereof shall be filed by him in the office of the auditor of his county. Upon the failure of any county school superintendent to make report to the contractor and to transmit the cash as required by law, a right of action shall immediately accrue to the contractor against the said county school superintendent, and the sureties upon his bond provided for in this act, for an accounting and for the recovery of any moneys received and not transmitted by him and for any damages which may have resulted from his neglect or failure to comply with the provisions of this act, and any judgment upon any such bond shall include a reasonable fee for the attorney prosecuting such suit, and such judgment shall be without relief from valuation or appraisement laws and shall be without stay of execution.

See § 4464*k*.

SEC. 4464*x*. **Embezzlement by county superintendent.** 10. Any county school superintendent, or trustee of any township or member of any school board in this State who shall fraudulently fail or refuse at the expiration of the term for which he was elected, or appointed, or at any time during such term, when legally required by the proper person or authority to account for and deliver and pay over to such person or persons as may be lawfully entitled to receive the same, all moneys, or school books which may come into his hands by virtue of the provisions of law shall be deemed guilty of embezzlement and upon conviction thereof shall be imprisoned in the state prison not more than five nor less than one year and fined in any sum not exceeding one thousand dollars and rendered incapable of holding any office of trust or profit for any determinate period.

See § 4464*m*.

SEC. 4464*y*. **Books, uniform use of.** 11. The books which have been, or may hereafter be adopted by the State of Indiana for use in its common schools by virtue of this act, or the act mentioned in section one hereof, shall be uniformly used in all the common schools of the State, in teaching the branches of learning treated of in such books, and it shall be the duty of the proper school officers and authorities to use in such schools such books for teaching the subjects treated in them.

SEC. 4464*z*. **Shipment of books—Trustee preserves.** 12. It shall be the duty of any person or persons, firm or corporation who shall hereafter furnish and supply books under the provisions of this act, or under the provisions of the act of 1889, title whereof is set out in the first section of this act, to ship to and to notify the consignee of such shipment, and deliver the books ordered by the various county superintendents, at such railway stations as may be most convenient for the various township trustees or school board in the several counties to receive the same as may be directed by the said county superintendent. And in preparing such books for such shipment it shall be the duty of every such contractor to wrap each several kind of books by themselves in packages of not to exceed five or ten books, according to their size, each such package to be securely wrapped in good substantial paper of sufficient weight to protect the books enclosed therein and to be closed at each end thereof, and each package to have plainly and clearly marked or printed on the outside thereof the kind and number of books contained therein, and as many of such packages shall be enclosed in larger packages or boxes as may be safe and convenient for shipment. And upon the receipt of such books it shall be the duty of each township trustee or school board to carefully care for and protect such books until sold, and to preserve the same in the original packages in which they are wrapped without opening, until all copies of the same books heretofore re-

ceived by him or it have been sold, and thereafter not to open any such package until all copies contained in packages previously opened have been sold: *Provided*, If upon the opening of any such package, any township trustee or school board shall discover that any of the books therein contained have been damaged, or are defective at the time of their receipt by him, or it, so as to be unsalable, he, or it, shall not be required to offer the same for sale, but in such an event, he, or it, shall immediately notify the county superintendent of such damaged or defective book or books, who shall immediately thereafter give notice thereof to the contractor furnishing the same, and thereafter such damaged or defective book or books shall be subject to the order of the contractor.

SEC. 4464*aa*. Labels for books. 13. It shall be the duty of any person or persons, firm or corporation who may hereafter furnish and supply books under the provisions of this statute, or of the act of 1889, the title whereof is set out in the first section of this act, to print in large letters upon the outside of the first cover of each book so furnished and supplied by him or them, the name of the adopted book, and upon the outside of the back cover the price at which such book is furnished to be sold to pupils, under such contract, and it shall be the duty of all county superintendents, township trustees, and other school officers, and school teachers to see that all books so furnished to pupils, for use in the schools of the State shall bear such imprint: *Provided*, This section shall not apply to copy-books.

SEC. 4464*bb*. Distribution of this act. 14. It shall be the duty of the superintendent of public instruction to cause to be printed at the expense of the printing fund, and to send to each of the county superintendents as soon as possible after the passage thereof a sufficient number of copies of this act to provide such superintendent and each township trustee and each member of a school board in such county with one copy of such act. Each county superintendent shall, at once, upon the receipt of the copies intended for his county, mail or otherwise deliver to each township trustee and member of a school board in his county a copy of this act.

SEC. 4464*cc*. This act supplemental to act of 1889. 15. Nothing in this act shall be construed to in anywise affect the act mentioned in section one of this act, and the two acts shall be regarded as each supplementing the other, except where this act shall provide a different procedure from the first act, in which case the provisions of this act shall govern. Nothing in this act shall be construed as affecting or impairing any contract right secured by any contractor under the act mentioned in section one of this act, but all such contracts are hereby declared to be, and are hereby made binding on the State to the same extent as they would have been had this act not been passed.

ARTICLE 3—TAXATION.

SEC.
4465. State tax.
4466. Uniform tax.
4467. Special tax.
4468. Assessment and collections.
4469. Local tax for tuition.
4470. Local tax, how applied.
4471. Special tax to pay debts.

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4465. State tax. 1. There shall be annually assessed and collected as state and county revenues are assessed and collected, sixteen cents on each one hundred dollars of taxable property, real and personal, in the State, and fifty cents on each taxable poll, for the purpose of supporting a general system of common schools.

An act of 1873 (p. 216) legalized tax levies for tuition made by school trustees prior to its enactment.

[1869 S., p. 41. Approved and in force May 13, 1869.]

SEC. 4466. Uniform tax. In assessing and collecting taxes for school purposes under existing laws, all property, real and personal, subject to taxation for state and county purposes, shall be taxed for the support of common schools, without regard to the race or color of the owner of the property.

[1873, p. 68. Approved and in force March 8, 1873.]

SEC. 4467. Special tax. 12. The trustees of the several townships, towns, and cities shall have the power to levy a special tax, in their respective townships, towns, or cities, for the construction, renting, or repairing of school-houses, for providing furniture, school apparatus, and fuel therefor, and for the payment of other necessary expenses of the school, except tuition; but no tax shall exceed the sum of fifty cents on each one hundred dollars' worth of taxable property and one dollar on each poll, in any one year, and the income from said tax shall be denominated the special school revenue. Any tax-payer who may choose to pay to the treasurer of the township, town, or city wherein said tax-payer has property liable to taxation, any amount of money, or furnish building material for the construction of school-houses, or furniture or fuel therefor, shall be entitled to a receipt therefor from the trustee of said township, town, or city, which shall exempt such tax-payer from any further taxes for said purposes, until the taxes of said tax-payer, levied for such purposes, would, if not thus paid, amount to the sum or value of the materials so furnished or amount so paid: *Provided*, That said building materials or furniture and fuel, shall be received at the option of said trustee.

1. *The section constitutional.* This question is decided in Rose *vs.* Bath, Tp. 10 Ind. 18, and several other cases, 102 Ind. 307. The school corporations of the State can not be authorized by statute to establish and maintain schools separate and apart from the common school system of the State. Such a statute is unconstitutional. But they are not prohibited from aiding those common

schools established under the supervision of the State, by levying a special tax 10 Ind. 70, 5 Ind. 557; see 102 Ind. 307.

2. *Who levies.* There can be no doubt but that the special tax authorized to be levied by section 12 of the school law is to be levied by the trustee of the school township or by the trustees for school purposes appointed by towns and cities.—*Woollen, Atty. Gen.* It seems to me that the *school* trustees levy the taxes authorized by section 12 of the school law.—*Baldwin, Atty. Gen.* This view is sustained by the doctrine of Carmichael *vs.* Lawrence, 47 Ind. 554.

3. *Commissioners have no control.* By an act approved March 8, 1873, [§ 4467], the legislature amended the act of 1865, giving trustees the absolute right to levy a special tax by increasing the amount from twenty-five cents to fifty cents, and reaffirming the former law, otherwise in the very words of it. This clearly removes all authority of commissioners over the trustees in making their special school levies.—*Hopkins, Supt.* The board of county commissioners has no control over school trustees in the levy of school taxes.—*Smart, Supt.*

4. *Uniform system.* A system that secures to all the various subdivisions of the State equal and uniform rights and privileges, leaving only to the local authorities the right, under the law, to govern the local school affairs, is a general and uniform system, and a law providing such a system is a general law within the meaning of the constitution. It is, therefore, competent for the legislature to delegate the power of assessing taxes for local school purposes to the inhabitants of the various localities, but the provisions of the law providing for such local taxation must be open to all corporations of like character, and the statute must be general in its nature and operation, 102 Ind. 307.

[1865, p. 3. Approved and in force March 6, 1875.]

SEC. 4468. **Assessment and collection.** The county auditor shall, upon the property and polls liable to taxation for state and county purposes, make the proper assessments of special school tax levied by the trustee, in the same manner as for state and county revenue, and shall set down the amount of said tax on his tax-list and duplicate thereof, as other taxes are set down, in appropriate columns; and he shall extend said assessment to the taxable property of the person transferred, which is situated in the township, town or city to which the transfer is made, and to the property and poll of the person transferred, situate in the township, town or city in which the person taxed resides, according to the rate and levy thereof in the township, town or city to which the transfer is made, and for its use; and said tax shall be collected by the county treasurer as other taxes are collected, and shall be paid, when collected, to the treasurer for school purposes of the proper township, town or city, upon the warrant of the county auditor. To enable county auditors correctly to assess said tax, the county superintendents of the several counties shall, at the time they make out and report to the auditor the basis of the apportionment of school revenue for tuition, as is required by § 4432, make out and report to said auditor a statement of transfers which have been made for school purposes according to §§ 4472 and 4473.

1. *When paid to township trustee*, R. S. 1881, § 6000.

[1867, p. 30. Approved March 9, 1867, and in force June 6, 1867.]

SEC. 4469. **Local tax for tuition.** 1. The trustees of the civil townships, the trustees of incorporated towns, and the common

councils of cities shall have power to levy, annually, a tax not exceeding twenty-five cents on each one hundred dollars of taxable property and twenty-five cents on each taxable poll; which tax shall be assessed and collected as the taxes for state and county revenue are assessed and collected.

1. *Who levies.* It seems to me that the civil trustees of towns levy this tax. The act says, the trustees of the civil townships.—*Baldwin, Atty. Gen.*

2. *By whom assessed.* The local tuition tax should be assessed and collected by the county auditor and treasurer, as in the case of the special school tax. Though not provided in so many words that it shall be extended to the property of a transferred person, yet, inasmuch as his property is subject to the tax in *some place*, it is justice and equity that the corporation to which he transfers should have the benefit of it. But the statute makes some general statements which were, no doubt, intended to cover just such cases as the one that has here arisen. It provides that the funds arising from such tax shall be under the charge and control of the *same officers*, secured by the *same guarantees*, subject to the same *rules and regulations*, etc., as funds arising from taxation for *common school purposes*, by the laws of this State. The conclusion, therefore, is inevitable that the tuition tax should be extended to the property in the township of the transferred person, and that it should be controlled by the county officers, and township and school trustees.—*Hopkins, Supt.*

3. *Constitutionality.* This section is constitutional, § 4467, *note* 4.

Sec. 4470. Local tax, how applied. 2. The funds arising from such tax shall be under the charge and control of the same officers, secured by the same guaranties, subject to the same rules and regulations, and applied and expended in the same manner as funds arising from taxation for common school purposes by the laws of this State: *Provided*, That the funds assessed and collected in any civil township, incorporated town, or city shall be applied and expended in the same civil township, incorporated town or city in which such funds shall have been assessed and collected.

1. *Anticipation.* This revenue is not forbidden to be anticipated, as is the State's tuition revenue, 30 Ind. 178.

[1873, p. 209. Approved and in force March 11, 1873.]

Sec. 4471. Special tax to pay debts. In all cases where any township trustee may have heretofore made and contracted debts against any township in the construction, repairing, or completion of school-houses, or in providing furniture or school apparatus therefor, and the special school revenue tax, as provided for in section 4467, shall be insufficient to satisfy, pay, and liquidate debts so made and contracted by such trustee, then, and in that case, it shall be lawful and such township trustee is hereby authorized to levy an additional tax of not exceeding twenty-five cents on each one hundred dollars' worth of taxable property, in any one year, to the amount now authorized to be levied under said section, for the purpose of paying, satisfying, and liquidating the debts made and contracted by said trustee, for the purposes aforesaid; and it shall be lawful and said trustee is hereby authorized to make said levy for each and every year after the passage of this act, until said debts, made and contracted as aforesaid for the pur-

poses aforesaid, shall be fully paid, satisfied and liquidated: *Provided,* That nothing in this act shall be construed to alter, change, modify, repeal, or in any way conflict with section 4467: *Provided, further,* That such additional levy shall only be made after the legal voters of the township to be affected thereby shall have declared in favor thereof.

1. *Time limited.* This section applies to such debts only as were contracted previous to its taking effect, March 11, 1873, and does not authorize a levy to pay any indebtedness created since that date.—*Hord, Atty. Gen.*

ARTICLE 4—ENUMERATION.

SEC.
4472. Trustee to take—His duties.
4473. Transfers.
4474. Payment for transfer.
4475. Enumeration, where filed.
4476. Township in two or more counties—Report.

[1873, p. 68. Approved and in force March 8, 1873.]

SEC. 4472. Trustee to take—His duties. 14. The trustees of the several townships, towns, and cities shall, between the first of March and the first of May in each year, make an enumeration of the children, white and colored, within their respective townships, towns, and cities, between the ages of six and twenty-one years, exclusive of married persons; and in making said enumeration, the trustees shall distinguish between the white and colored children, enumerating them in separate lists, and shall list the names of parents, guardians, or heads of families, male and female, having charge of such children; and opposite each name, in appropriate columns, shall be entered the whole number of children in charge of the person so named, specifying, particularly, the number of males, the number of females, the number of the school to which such person is attached for school purposes, and the number and initials which designate the congressional township in which such person resides; including in said list and enumeration the names of such persons as have been transferred to his township, town, or city, from other townships, towns, or cities, and the enumeration of their children, and excluding therefrom the names and number of children of such persons as have been transferred from his township, town, or city, to other townships, towns, or cities. Each township trustee, upon making the first enumeration after the taking effect of this act, shall inquire of each person whose name he so lists, to which school he or she desires to be attached; and such persons, upon making their selection, shall be considered as forming the school district of the school selected, and none shall be allowed thereafter to attach themselves to, or have the privilege of, any other school but by the consent of the trustee, for good cause shown. At subsequent enumerations, the same inquiry shall be made by the trustee of the parent, guardian, or head of family, having charge of children between the ages

aforesaid, whose residence has been changed, or whose children have become subject to be enumerated for the first time since the last enumeration. In case a change in the location of a school in the township has been made since the last enumeration, the trustee shall make the same inquiry of the persons whose school privileges are affected by such change. But such inquiries need not be made by the trustee of incorporated towns and cities when they take their enumerations. The persons listed in each of such towns and cities shall be considered as forming but single school districts therein, distinct from the townships in which they are situated.

1. *Who may be enumerated.* Only persons between the ages of 5 [now 6] and 21 years are entitled to be enumerated, and to have the benefits of the common schools, 20 Ind. 268. A minor attains to 21 years of age on the day preceding the twenty-first anniversary of his birth, 6 Ind. 447.

2. *Residence.* The legal domicile and residence of a minor, not emancipated, is that of his parents. Parents residing in another state can not send their children into this State for the purpose of procuring an education, and enable them to acquire such a residence here as will entitle them to admission into the common schools of this State, unless the circumstances are such as will create a *bona fide* legal residence here, 18 Ind. 14.

While this section declares that the privileges of the school shall be limited to such persons as were attached to the school at the time of the enumeration, it must not be so construed as to exclude persons who move into a district after the enumeration. Such a construction would, in many cases, work serious detriment.—*Hoss, Supt.*

3. *Non-resident students.* Persons residing temporarily within a corporation, for the purpose of studying at a school or college there located, do not acquire a legal residence therein, and the trustees of such corporation have no more right to enumerate them than they would have to enumerate a Sunday-school picnic from a neighboring county that they might chance to find spending a day within their borders.—*Bloss, Supt.*

4. *Choice of districts.* It should be borne in mind by the trustee that the choice of a school district is not to be an *annual*, but a *permanent* choice; and it will be well to inform every parent or guardian, at the time of making the enumeration, of the permanent character of the preference thus to be expressed, so that there shall be no just cause of complaint on the part of any.—*Mills, Supt.* A person may be detached from one district and attached to another at any time during the year, with the consent of the trustee, upon presentation to him of a suitable reason therefor; but a person whose school privileges have been affected by his removal, or by the relocation of a school-house, has the right at the next enumeration to choose a district in the township to which he will be attached.—*Smart, Supt.* The distinction must be observed between a transfer and an attachment to a district, the former being a change from one corporation to another, the latter from one district to another in the same corporation.—*Bloss, Supt.*

5. *Choice of schools in cities and towns.* There is no provision in the law, that we are aware of, authorizing parents or guardians to determine to which one of the schools they will send their children in towns and cities. These matters are managed, we believe, by the trustees exclusively, in towns and cities, who, doubtless, to some extent, consult the wishes of the inhabitants, having in view the grade of the school which it is proper that any given pupil should attend, the convenience of parents and the surrounding circumstances, 44 Ind. 207.

6. *Transferred persons.* I believe that it is the duty of the school trustee of the corporation *to* which the transfer is made to enumerate the transferred person, even though he is obliged to go outside his civil corporation to do this. —*Smart, Supt.*

7. *Privileges of certain children.* The school trustees are required to "make an enumeration of the children, white and colored, within their respective townships, towns and cities," and to "list the names of parents, guardians, or heads of families, male and female, having charge of such children." The law in this section recognizes three distinct relations in which the person having charge of a child may stand to the child, viz.: parent, guardian, and head of a family. The term "heads of families" must refer to a relation not included in the terms "parents" and "guardians." I think it is intended to cover cases where a person has children of school age in his home and under his protection, whether as employes or as members of his family, though without formal adoption or legal guardianship. But there are other cases which the provision of the statute as to listing names does not include, but which must be provided for under the requirement for enumerating the children within the several corporations. The domicile of a minor is with his parent or guardian, and in theory every minor is supposed to have a guardian. But, in fact, many are completely *sui juris*, independent of parental control or support, and living by their own labor. The homes of such, for the purposes of this section, must be the places where they are employed or stay without any immediate intention of departing therefrom. No one can be said to have charge of them; they do not live at the homes of their employers, and are not under their protection as heads of families. They are none the less entitled to school privileges under what our constitution requires to be "a general and uniform system of common schools, wherein tuition shall be without charge, and equally open to all." The supreme court remarks, incidentally, in Johnson *v.* Smith, 64 Ind. 275: "The theory of these statutory provisions is, that each and every child of the proper age, without regard to race or color, within the limits of this State, is entitled of right, and without charge for tuition, to the benefits of such an education as may be obtained in and by our common schools." I hold, therefore, that all persons between the ages of six and twenty-one years are entitled to school privileges, and may be enumerated in the school corporations, in which they, in good faith, have their home—understanding home in the general sense, not in the technical sense of legal domicile. Those who are in any way in charge of a resident head of a family should be so enumerated; those who can not be so assigned may be enumerated as without guardian. In acting under this interpretation trustees should guard against imposition, by finding out whether the case can be brought under the law of transfer (§§ 4473 and 4474); and, if not, whether the child is dependent upon himself for support, or upon the person with whom he lives. In either case he should be admitted to the schools. But children can not legally be maintained and sent to school by parents or guardians in corporations other than those in which they themselves reside, nor can a minor become a resident of a school corporation merely to acquire an education therein. (Note 2, above.)—*Holcombe, Supt.*

8. *Mandate.* In an application for a mandate to enforce the admission of a person to a common school, the complaint must show that the applicant is under twenty-one and not under five years of age, and unmarried, 20 Ind. 268.

9. *Colored schools and children.* The township trustee will not be required by mandate to establish separate schools for colored children, unless it is shown to be practicable; nor will he, unless such separate school is practicable, be required by mandate to make separate lists of such children, as provided by this section, 85 Ind. 213.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4473. Transfer. 16. When persons can be better accommodated at the school of an adjoining township, or of any incorporated town or city, the trustee of the town or city in which such persons reside shall, if such person so request, at the time of making the enumeration, transfer them, for educational purposes, to such township, town, or city, and notify the trustee of such transfer; which notice shall furnish the enumeration of the children of the persons so transferred. Each trustee shall, with his report of

the enumeration, report distinctly the persons transferred to his township, town, or city, for school purposes; indicating in said report the number of children in charge of the persons transferred, with the same particularity that is observed in the enumeration.

1. *The right of transfer.* Persons can be transferred at no other time than the enumeration, and then only when the trustee is satisfied that they can be better accommodated.—*Fletcher, Supt.*

The right to be transferred is not absolute, depending upon the choice of the citizen, like the right to be attached to any school in his township. It can only be claimed if he "can be better accommodated" by such transfer, and the power of the trustee to make the transfer depends upon the existence of that condition. Of necessity, then, he must determine whether or not the condition exists, and act upon such determination. But his decision is not final. Section 4537 expressly provides for an appeal to the examiner from all decisions of the trustee relative to school matters; and for the purpose of preventing, as far as can be, vexatious litigation, provides that the decision of the examiner shall be final as to certain matters, among which is enumerated "transfers of persons for school purposes," 26 Ind. 345.

2. *To what corporations.* The word *adjoining* must be observed. Persons can only be transferred from one township to an *adjoining* township. It is difficult to see how a person (in view of the regularity with which our townships are laid out) could be better accommodated in a township not adjoining than in the one of his residence. But the word adjoining does not apply to towns and cities, except that it appears from § 4474 that the city must not be farther away than the adjoining county.—*Bloss, Supt.*

3. *Better accommodation.* When a district, by reason of its own failure, neglect, or want of interest, has not an efficient school, a party attached to the district can not claim the right of transfer, on the plea of better accommodation, because the school is a poor one, for it would be taking advantage of his own failure of duty or want of interest. If a transfer under such circumstances could be claimed, it would work to the injury of many of our schools, as well as produce difficulty in their management.

But if a large majority of the pupils of the district, in which the party desiring a transfer resides, are of a primary grade, so that pupils more advanced can not be accommodated, the party in question, on a plea of better accommodation, that his children may pursue studies more advanced than can be taught in the school, can claim the right of transfer, for in this case the transfer is not to the injury, but to the advantage and interest of the school.

The term "better accommodated" the legislature evidently intended should apply to those circumstances over which an individual has no control, and not to those which he might have avoided or remedied. A person can not be transferred to avoid the payment of a high rate of taxes.—*Baldwin, Atty. Gen.*

Trustees should, under no circumstances, permit a transfer when they believe it is sought simply to avoid a tax in the township from which the person wishes to be transferred. Neither is dislike of neighbors or neighbors' children good cause for transfer.—*Fletcher, Supt.*

4. *Re-transfer.* A person can not be transferred without his consent, nor can he be transferred if he has no children of school age. A transfer once made need not be renewed at each enumeration, but remains until a re-transfer is made. When a transferred person ceases to have children of school age, a cause arises for a re-transfer to his original corporation; but that cause must be followed up by an actual re-transfer and report by the proper officers; otherwise he continues in, and pays taxes upon his property in the district to which he was originally transferred.—*Baldwin, Atty. Gen.*

5. *Duty of auditor, superintendent and trustee.* The additional labor required of the auditor by a transfer is simply to enter the name of the party transferred and the value of his property situate in the township in which he resides upon the tax duplicate of the township to which the transfer is made, and assess upon such property the proper special school tax. All other property of the party transferred is subject to special school tax in the township where it

is situate. County superintendents in making the statement of transfers required by this section should state distinctly the names of the parties transferred, the township in which each resides, and the township to which transferred. Nothing short of this will enable the auditor properly to assess the special school tax required.

Notice of transfers should be given before the first day of May in order that the trustee may be able to include the names of parties transferred in his list and enumeration, as required by section 4472.

For the convenience of the county superintendent, each trustee should, at time of making his report of enumeration, make a separate report of all transfers *to* his township with the same particularity required in taking the enumeration.—*Hoss, Supt.*

6. *Records of transfer.* It is the duty of the trustee that transfers; of the trustee to whom the transfer is made; of the superintendent, and of the auditor, each and all, to keep an official record of all transfers of children for school purposes. The trustee to whom the transfer is made can not refuse to receive it.—*Baldwin, Atty. Gen.*

7. *Taxes of transferred persons—On what property.* When a person is transferred for school purposes to any township in his own county he must pay to the county treasurer, on all his property situated in the township in which he resides the same rate of school and poll taxes as is paid by the people of the township to which he is transferred, and for the use of that township. If he owns property in another township, it must be taxed at the rate of other property in that township, and for the use of schools therein.—*Larrabee, Supt.*

Method suggested. The simplest method of securing the purpose of these provisions will be for the trustees of the townships to which any persons have been thus transferred, to enroll them as members of their respective districts, and ever after take the enumeration of their children, and assess the township tax on their property.—*Mills, Supt.*

8. *To what taxes liable.* A transferred person is liable to all taxes levied in the corporation to which he is transferred, under sections 4467, 4469, 4471 and 4490.

9. *Property of wife or tenant.* The father is the head of the family, and as such has charge of the children, and has power to have his children transferred for school purposes even against the will or wish of the wife, but he has no control over her property. He could not, by transferring his children to another township, etc., transfer his wife's property for school taxation, and thus submit it to a greater or different tax without her consent. In all similar cases the wife should join in the application for the transfer, and the trustee take her written consent for the taxation of her property if the application is granted. If a tax-payer has a tenant on his farm who has charge of children entitled to the privileges of school, such tenant can be transferred, although, of course, the landlord's property could not be taxed in the corporation to which his tenant was transferred.—*Baldwin, Atty. Gen.*

10. *Removals.* If a transferred person moves into the corporation to which he has been transferred, that corporation thereby loses the right to tax his property situated in the corporation from which he has removed. If he moves into a different corporation he can not be taxed therein till after the next enumeration, when he may be transferred thereto by the trustee of the corporation in which he had last been taxed.—*Bloss, Supt.*

SEC. 4474. Transfer to an adjoining county. 17. Each person so transferred, for educational purposes, to a township, town, or city in an adjoining county, shall, annually, pay to the treasurer of such township, town, or city (when a tax is levied therein for the purposes aforesaid) a sum equal to the tax levied, computing the same upon the property and poll, liable to tax, of such persons in the township, town, or city where he resides, according to the valuation thereof by the proper assessor; which payment shall

release his property from special school tax in the township in which he resides. In default of such payment, he shall be debarred from educational privileges in the township, town, or city to which he may have been transferred; and the trustee thereof shall notify the trustee of the township, town, or city in which he (the person transferred) resides, of such exclusion.

1. See section 4468.

2. *To what corporations.* The township to which a transfer is made, though in a different county, must be *adjoining* to the one in which the person resides, but it seems that he may be transferred to any town or city in a county upon which his own township borders.—*Bloss, Supt.*

3. *Taxes—To whom paid.* A person transferred to a township in another county must pay directly, of his own accord, to the treasurer of the township to which he is transferred, a sum equal to the tax in such township, computing the same upon all his property in the township where he resides. Whenever a person, transferred to another county, in compliance with the provisions of this section, pays personally to the treasurer of any township the required amount on his property in the township in which he resides, that property should of course not be held liable to any tax assessed for school purposes in the township from which he has been transferred. The same property ought not to be taxed, directly or indirectly, for the use of schools in more than one township. —*Larrabee, Supt.*

Change in law. The above was a decision when the law required taxes to be paid to township treasurers. These taxes are now paid to the county treasurer, and he credits the proper township with the amount received.

4. *Constitutional.* This section is constitutional, 62 Ind. 291.

[1873, p. 68. Approved and in force March 8, 1873.]

Sec. 4475. Enumeration, where filed. 18. Each trustee shall, on or before the first day of May, annually, report to and file with the county superintendent of the proper county a copy of his said list and enumeration, with his affidavit endorsed thereon, to the effect that the same is, to the best of his knowledge and belief, full and accurate, and that the enumeration does not include persons who are less than six nor more than twenty-one years of age.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4476. Township in two or more counties—Report. 19. When a congressional township is located in two or more counties, the proper trustee for each portion thereof in the several counties shall report, at the same time and in like manner as provided in the last preceding section, to the county superintendent of the county in which the congressional township fund of such township is held in trust and managed.

1. *Explanation.* This section requires that when a congressional township is located in two or more counties, the proper trustee for each portion thereof shall make two separate and distinct reports of enumeration:

1st. The ordinary report of enumeration prescribed by §§ 4472 and 4475.

2d. A special report of enumeration, consisting of an enumeration of the school children living within such part of the divided congressional township as is within the limits of his own civil township. This special report should be made to the superintendent of the county in which the fund belonging to such divided congressional township is managed. In case parts of several congressional townships lie in a civil township the trustee must evidently make as

many separate special reports to the superintendent of the county which manages the funds of the several congressional townships.—*Smart, Supt.*

ARTICLE 5—APPORTIONMENT OF REVENUE.

SEC.
4477. To be made semi-annually.
4478. Reports of county auditors.
4479. When and what county auditor reports.
4480. When congressional township divided.
4481. Auditor failing to report—Penalty.
4482. Apportionment, how made to counties.
4483. Printed statement.
4484. Payment to counties.
4484*a*. Payment to counties.
4485. Unapportioned balances.
4486. County auditor's apportionment.
4487. Interest on sinking fund.
4487*a*. Surplus dog-tax fund.
4487*b*. Distribution of dog-tax fund.

[1873, p. 80. Approved and in force July 7, 1873.]

SEC. 4477. To be made semi-annually. 109. There shall be two apportionments of the school revenue. for tuition made in each year by the state superintendent of public instruction—one on the fourth Monday in May, and the other on the first day of January, unless the said day of the month should be Sunday, and, if so, on the day following.

SEC. 4478. Reports of county auditors. 110. To enable the superintendent to make said apportionments, and to ascertain the amount of said revenue collected and ready for that purpose, the auditors of the several counties of the State shall, promptly, after making the settlements with the county treasurers of the respective counties in April for the amount collected on tax-list, and in December for the amount of delinquent tax collected, make report to said superintendent of the precise amount of school revenue for tuition collected in their respective counties and ready for apportionment and distribution; which report shall be verified by the oath or affirmation of the auditor indorsed thereon.

SEC. 4479. When and what county auditor reports. 111. The first of said reports in each year shall not be delayed later than the third Monday in May, and the second not later than the twenty-fifth day of December. Said reports shall show—

First. The amount of school tax collected since the last report, whether upon the current year's tax-list or delinquent tax.

Second. The amount of interest collected since the last semi-annual report, and the amount, if any, not previously reported, upon loans of common school funds, and on any indebtedness which is due or payable to said funds, arising from the sale of seminary property or otherwise.

Third. The amount derived from liquor licenses and unclaimed fees not previously reported.

Fourth. The total amount of school revenue thus collected and ready for apportionment.

Fifth. The income derived from the congressional township school fund, including the interest on loans of said fund, and on deferred payments for school lands which have been sold, and the

rents and profits derived from the leasing or renting of any such lands, or otherwise.

Sixth. The amount of said income from the congressional township fund on hand for distribution in parts of the townships in the adjacent counties, specifying the amount on hand for each of the several counties.

1. *Instructions to auditors.* 1st, When you make your report to the state superintendent you give the amounts (if any) due to adjacent counties. At the same time you notify the auditors of these counties, specifying the amounts due to the several townships. (§ 4480.) Mail all such notices and the report on the same day. 2d, Then immediately draw warrants upon your own treasurer in favor of the treasurers of the several adjacent counties for the amounts respectively due them, and cause your treasurer to remit said amounts to said counties *at the same time* that he makes his remittance to the treasurer of state. The expense of said remittances must not be paid out of any school revenues. 3d, The auditor of each county to which such revenue is paid will include it in his next distribution (§ 4486), and will notify trustees that it is no longer necessary for them to go or send for their money to other counties, but that they will hereafter draw the whole of their revenues from the treasury of their own county.—*Bloss, Supt.*

[1865, p. 3. Approved and in force March 6, 1865.]

SEC. 4480. When congressional township divided. 112. When the congressional township lies partly in one county and partly in another, the auditor of the county in which the fund of such township is managed shall notify the auditor of the county in which any portion is situated of the amount due to such portion.

SEC. 4481. Auditor failing to report—Penalty. 113. On the failure of any county auditor to make his said semi-annual report in time for said apportionments, his county shall be subject to a diminution of one hundred dollars in the next apportionment of said revenue by the superintendent. The sum thus withheld may be collected from said auditor, in a suit before a justice of the peace, prosecuted in the name of the State, by any person living in said county who has children enumerated for school purposes for the current year, who is aggrieved by said diminution. Said suit shall be commenced within two years from the time when said report was due, and not afterward: *Provided,* That said auditor may discharge himself from liability to such suit by a certificate of the postmaster that said report was mailed in due time, together with his own affidavit of that fact.

SEC. 4482. Apportionment, how made to counties. 114. The state superintendent of public instruction shall, on the days fixed by section one hundred and nine of this act [§ 4477] for his apportionment of said revenue in each year, add to the sum total of said revenue in readiness in each county for apportionment the sum of twenty-five thousand dollars of the State's indebtedness to the schools; which addition shall continue to be made at each apportionment, until the whole of said indebtedness, together

with six per cent. interest thereon from the time said indebtedness accrued, is paid; the amount of which debt and interest shall be settled and adjusted by and between the superintendent of public instruction and the auditor of state. And after said addition, the superintendent shall apportion the whole of said sum to the several counties of the State, according to the last enumeration of children therein, with due reference to the diminutions provided for by sections forty-one and one hundred and thirteen of this act [§ 4431 and 4481], and without taking into consideration the revenue derived from the congressional township school fund in such apportionment.

1. *State normal school.* Fifteen thousand dollars must also be apportioned semi-annually to the state normal school, Acts 1891, p. 311.

Sec. 4483. Printed statement. 115. Said superintendent shall make out and have printed a statement showing—

First. The enumeration of children in each county.

Second. The amount of school revenue ready for apportionment in each county, and the source from which the same is derived, including said addition from the state indebtedness.

Third. The distributive share thereof apportioned to each county.

He shall file a copy of said statement with the auditor of state and treasurer of state, and he shall forward a copy thereof, by mail, to each of the county auditors, county superintendents, and county treasurers of the State.

Sec. 4484. Payment to counties. 116. The auditor of state shall, at the time of making the semi-annual settlements with the several county treasurers, give them each a warrant on the state treasury for the distributive share of said revenue apportioned to their respective counties, the amount of which shall be retained by said treasurers out of the money or revenue in their hands; and the balance ascertained to be due to the State, of ordinary state revenue or other revenue, together with said warrant, shall be paid into the state treasury. The settlement between the respective county treasurers and the auditor of state, and the drawing of the warrants for the amounts apportioned to their respective counties; the ascertainment of the balance payable into the state treasury, and the payment of said balance, and retention by the county treasurers of their distributive shares of school revenue, according to said apportionment,—shall be concurrent acts, and shall be done and performed in such a manner as to effect a complete semi-annual disbursement, from the state treasury to the several counties of the State, of all the school revenues then apportioned to them, and as soon as practicable after the apportionment is made.

See § 4484*a*.

[1885 S., p. 70. Approved and in force April 13, 1885.]

Sec. 4484*a*. Payment of excess. 1. The auditor of state shall, at the time of making the semi-annual settlements with the several county treasurers, give them each a warrant on the state treasury for the state school revenues collected in their respective counties, the amount of which shall be retained by said treasurers, and when the superintendent of public instruction shall have made his semi-annual apportionments of school revenue for tuition to the several counties of the State, the auditor of state shall draw his warrant upon the state treasury to the respective county treasurers to which there may be due a greater amount than the state school revenue which has been collected in said counties, and for which a warrant as hereinbefore provided has been issued to them, and said county treasurers to whom warrants have been issued at the semi-annual settlements for more than their distributive share of said school revenue shall, upon notice being given them thereof by the auditor of state, forthwith pay such excess into the state treasury. [El. Sup. § 1267.]

This section modifies the provisions of §§ 4484 and 4485.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4485. Unapportioned balances. 117. If at any time, from any cause whatever, an unapportioned balance of school revenue shall appear in the state treasury, other than that which is nominally therein at the passage of this act, the superintendent of public instruction shall add said balance to the sum to be apportioned, and apportion it at the next succeeding apportionment after such balance so appears.

Explanation. The unapportioned balance in the treasury consists chiefly of moneys paid in by the attorney-general. But at each apportionment the state superintendent leaves a small balance, always less than one cent for each child enumerated. See § 4484*a*.

[1873, p. 80. Approved and in force March 11, 1873.]

Sec. 4486. County auditor's apportionment. 118. The auditor of each county shall, semi annually, on the second Monday of June and on the last Monday in January, make apportionment of the school revenue, to which his county is entitled, to the several townships and incorporated towns and cities of the county; which apportionment shall be paid to the school treasurer of each township and incorporated town and city by the county treasurer. In making the said apportionment and distribution thereof, the auditor shall ascertain the amount of the congressional township school revenue belonging to each city, town and township; and shall so apportion the other school revenue as to equalize the amount of available school revenue for tuition to each city, town and township, as near as may be, according to the enumeration of children therein, and report the amount apportioned to the

superintendent of public instruction, verified by affidavit: *Provided, however,* That in no case shall the income of the congressional township school fund belonging to any congressional township, or part of such township, be diminished by such apportionment, or diverted or distributed to any other township.

1. *Method constitutional.* This method of apportionment is according to the command of the constitution, and, *perhaps*, it requires the same principle to be applied to the distribution among the counties, 7 Ind. 570; *id.* 636.

2. *Teacher's remedy.* When a teacher obtains judgment against a school corporation, for services as such, and a return of execution thereon *nulla bona*, he may, by proper suit, obtain application of any school revenue in the county treasury, belonging to such corporation, to the payment of the judgment, 11 Ind. 520.

3. *Trustee's liability.* If the township trustee receives funds, under this section, which belong to a school town within the township, he may, after demand, be compelled, by mandate, to pay the amount to the town—Johnson *vs.* Smith, 64 Ind. 275. Trustees do not apportion revenue among districts, § 4494, *note* 2.

4. *Rule for making apportionment.* Auditors will find no trouble in adjusting the apportionment without the labor of giving in detail the specific amount of each township's share of the two funds, if they will ascertain what the whole amount of the school revenues for the county, both common and congressional, will give each scholar on a *per capita* division, and then ascertain whether any township's congressional revenue will yield a larger dividend to its children. If any township thus has a larger *per capita* than that of the whole county from the combined revenues, exclude the children and congressional revenue of that township from the calculation, and distribute to the other corporations on the consolidation basis. An example may be presented as follows:

Congressional Tp.	A—300	children,	$375	Congressional revenue,	$1.25	*per*	*capita.*
"	"	B—200	"	150	"	"	75	"	"
"	"	C— 84	"	42	"	"	50	"	"
"	"	D—400	"	100	"	"	25	"	"
"	"	E—250	"						

The last four townships have 934 children, and $292 congressional revenue. The common school revenue of the county amounts to $875.50, which, added to the $292, will make $1,167.50. This will give the last four townships $1.25 per scholar, the same that A receives from her congressional revenue alone, in which case the same result is obtained with or without including A's children and revenue. But if the common school revenue were only $828.80, the last four townships would get only $1,120.80, or $1.20 per scholar. In this case A must receive the whole of her own revenue, which *must not be diminished* by any process of distribution; and the remaining revenues must be distributed among the other corporations.—*Mills, Supt.*

5. *Town incorporated within township.* A town incorporated within a township, after the election of school trustees, is entitled to demand and receive from the officer having it in his possession a proportion of the school fund of the township; and may by mandate compel its payment to it, 64 Ind. 275.

[1865, p. 139. Approved and in force March 21, 1865.]

Sec. 4487. Interest on sinking fund. 1. All interest accrued or accruing on the sinking fund or any other fund held by this State for the benefit of the common schools of this State, on and after the first day of January, one thousand eight hundred and sixty-five, is hereby set apart for distribution as other revenues are distributed, for the support of the common schools of this State.

[1885, p. 161. Approved April 8, 1885, and in force July 18, 1885.]

Sec. 4487*a*. Surplus dog-tax fund. 8. The trustees shall register such losses in the order they are reported, which order shall be observed in the payment of losses: *Provided,* That no person shall receive pay for sheep killed or maimed by a dog owned, kept or harbored by himself: *Provided, further,* That the dog fund heretofore collected shall be added to and applied with the fund arising under the provisions of this act; and when it shall so occur on the first Monday in March of any year in any township that said fund shall accumulate to an amount exceeding fifty dollars, over and above orders drawn against the same, the surplus aforesaid shall be paid and transferred to the county treasury of the county in which such township is located, and the fund arising from such surplus from the township[s] of the county shall constitute a county dog fund, and shall be distributed among the townships of the county in which the orders drawn against the dog fund exceed the money on hand. This distribution shall be made on the second Monday in March, and if the said county dog fund be insufficient to pay for all the killed sheep of all the townships, the distribution shall be made in the ratio of the orders drawn against the dog fund of the townships, and unpaid and unprovided for, which ratio shall be gotten from the report of the trustees of the townships made to the auditor of the county, which it is hereby directed shall be made by each township trustee of the county upon the first Monday in March of each year, which report shall show all receipts into the dog fund of his township, and all orders drawn against the same; and when it shall occur upon the second Monday in March that there is a surplus left of the county dog fund after provisions have been made for the payment for all the killed sheep of all the townships of the county, such surplus shall be distributed for the schools of the county in the same manner that interest upon the congressional school fund is distributed. [El. Sup. § 454.]

1. *Explanation.* It is held by the supreme court in City of South Bend *vs.* Jaquith (90 Ind. 495), that under R. S. 1881, § 2651, cities and towns are not entitled to any share in the surplus dog fund on the ground that "this section in plain and explicit language directs the trustee to transfer the surplus *to the school revenue of the township.*" The same language was used in the act of March 7, 1883; but in the new section here given the wording is entirely different, directing that "such surplus shall be distributed to the schools of the county *in the same manner that interest upon the congressional school fund is distributed.*" The meaning of this requirement is somewhat doubtful. Interest on the congressional fund is not distributed among the schools of the county, but each township receives the interest upon the amount of the congressional fund belonging to itself. The legislative intent may, however, be inferred from previous acts to be that such surplus should be added to and distributed with the tuition revenue of the county. It will be most convenient if the amount of surplus on hand the second Monday in March be reported to the county auditor, and by him distributed in the following June. The new law, at any rate, revives the right of towns and cities to such *pro rata* share in the dog fund (see note 2 under § 4487*b*) as they have in the congressional revenue.—*Holcombe, Supt.*

2. *Distribution—Anticipation.* The fund arising from the dog tax should not be used exclusively for the support of one school in a township to the neg-

lect of all others. It is a fund to which all the schools in the township have an equal claim, and it should be apportioned by the trustee among the schools, with the other tuition funds. We think it must follow, also, that it should await the apportionment of other funds apportioned for tuition before it is expended, 47 Ind. 241.

3. *Transfer to school revenue.* The township trustees may transfer to the school revenue accounts the surplus dog-tax before the August meeting of the county commissioners, and embody the amounts in their reports to them and to the county superintendent, subject, like all their other accounts, to revision and correction by the commissioners.—*Holcombe, Supt.*

4. See also § 6509*a*, and § 6329*i*.

[1877, p. 74. Approved and in force March 14, 1877.]

SEC. 4487*b*. Distribution of dog-tax fund. 1. All sums of money now remaining in the hands of the township trustees, arising from surplus dog-tax fund, shall be, upon the taking effect of this act, placed to the credit of the tuition fund of such township, and shall be expended as other tuition funds of the township are expended. The township trustees of the several townships in the State are hereby authorized to pay to school trustees of incorporated towns or cities their proportion *pro rata* according to the enumeration for school purposes within such township.

1. *Not repealed.* The act of 1881 [and hence § 4487*a*] does not repeal the act of March 14, 1877, and surplus dog-tax must be distributed according to its provisions.—*Baldwin, Atty. Gen.*

2. *Mode of distribution.* The first sentence of this section is superseded by § 4487*a*, but the latter part is in force and must govern in the distribution of this revenue.—*Holcombe, Supt.*

In case a township has within its borders an incorporated town or city, the trustees of the township must apportion a share of the surplus dog-tax to each child enumerated therein, and to each child enumerated in the township outside the town or city, *pro rata*. When the town or city is composed of parts of several different townships, each of the trustees of such townships should pay over to the town or city such proportion of the surplus dog-tax as the number of children in the part of the town or city which lies in his township bears to the whole number in the township. The township trustee, in connection with the town or city trustees, should estimate the number of children in that part of the town or city, unless the enumeration has been taken in such a way that accurate information can be given.—*Smart, Supt.*

ARTICLE 6—SCHOOLS IN CITIES AND TOWNS.

SEC.
4488. Bonds for school buildings.
4489. Use of proceeds.
4490. Special tax.
4491. Condition before building.
4492. Surplus special school revenue.
4492*a*. Anticipating revenue.
4492*b*. Laws repealed.

[1873, p. 60. Approved and in force March 8, 1873.]

SEC. 4488. Bonds for school buildings. 1. Any city or incorporated town in this State which shall, by the action of its school trustees, have purchased any ground and building or buildings; or may hereafter purchase any ground and building or buildings; or has commenced, or may hereafter commence, the erection of any building or buildings for school purposes; or which shall

have, by its school trustees, contracted any debts for the erection of such building or buildings, or the purchase of such ground and building or buildings; or such trustees shall not have the necessary means with which to complete such building or buildings, or to pay for the purchase of such ground and building or buildings, or pay such debt,—may, on the filing by the school trustees of said city or town of a report, under oath, with the common council of such city, or the board of trustees of such town, showing the estimated or actual cost of any such ground and building or buildings, or the amount required to complete such building or buildings, or purchase such ground and building or buildings, or the amount of such debt, on the passage of an ordinance authorizing the same by the common council of said city or the board of trustees of such town, issue the bonds of such city or town to an amount not exceeding in the aggregate fifty thousand dollars, in denominations not less than one hundred nor more than one thousand dollars and payable at any place that may be designated in the bonds (the principal in not less than one year nor more than twenty years after the date of such bonds, and the interest annually or semi-annually, as may be therein provided) to provide the means with which to complete such building or buildings, or to pay for the purchase of such ground and building or buildings, and to pay such debt. Such common council or board of trustees may, from time to time, negotiate and sell as many of such bonds as may be necessary for such purpose, in any place and for the best price that can be obtained therefor in cash: *Provided*, That such bonds shall not be sold at a price less than ninety-four cents on the dollar.

1. See Williams *vs.* Albion, 58 Ind. 329.

2. *Petition.* A petition of the tax-payers to the board of trustees or common council is not necessary to enable the board to levy a tax to complete school buildings, 44 Ind. 83.

3. *Constitutional.* The above section is constitutional, 44 Ind. 83; 86 Ind. 17.

4. *Injunction.* When the school trustees file with the board or common council a verified report, showing that as such school trustees they have contracted for the purchase of real estate on which to erect school buildings, and showing the amount of the debt incurred for such realty, and the estimated cost of such buildings, and asking the issuance of bonds, such board or council may, by ordinance, authorize the issue and sale of bonds of the city, equal in amount to the cost of such real estate and the estimated cost of such buildings, and such board or council can not be enjoined from so doing, 58 Ind. 329.

5. *Basis of valuation.* It has been asked whether the town trustees of an incorporated town in issuing bonds for a school building in accordance with § 4488 base the issue, as to amount on the value of property in the town increased by the value of the property of persons transferred to the town for school purposes.

The corporation can not become indebted for any purpose to an amount in the aggregate exceeding two per centum in the value of the taxable property within such corporation, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, § 220.

Where persons can be better accommodated at the school of an adjoining township, or of any incorporated town or city, the trustee of the town or city

in which such person resides shall, if such person so request, at the time of making the enumeration, transfer them for educational purposes to such township, town or city, and notify the trustee of such transfer. Such person so transferred shall annually pay to the treasurer of such township, town or city (when a tax is levied therein for the purpose aforesaid) a sum equal to the tax levied, computing the same upon the property and poll liable to tax of such persons in the township, town or city where he resides, according to the valuation thereof by the proper assessor (§§ 4473, 4474).

The property of the person transferred to an adjacent township, town or city for educational purposes is not assessed by the assessor of the township, town or city to which he is transferred, for state and county taxes, but he is assessed in the township in which he resides.

The constitution provides that the value of the taxable property within such corporation is to be ascertained by the last assessment for state and county taxes. The property of such transferred person does not appear in the last assessment of the corporation for state and county purposes to which he is transferred, but in the township in which he resides, and consequently the property of such transferred person, residing in another township, can not be taken into consideration in determining the amount of property within such corporation to which he is transferred, as the basis for issuing said bonds.—*Hord, Atty. Gen.*

6. *Liability of trustees.* It is asked whether the members of a town board or the members of a school board, incur personal liability by issuing and negotiating school bonds in excess of the constitutional limit.

Public officers are not personally liable on contracts within the scope of their authority and line of duty unless it is apparent that they intended to bind themselves personally.

If a public agent transcends his authority, he may in some cases be rendered personally responsible for the consequence of his act.

If the officers acting officially exceed their authority innocently, under a mistake of law in which the other contracting party equally participates with equal opportunities of knowledge, and the officers contract with him, and he with them, in their official capacity, neither looking to personal liability, the officers are not personally liable.—*Hord, Atty. Gen.*

7. *By whom issued—Constitutional limit.* School trustees have no power to issue bonds to raise money to build school-houses except by authority of an ordinance of the common council or board of civil town trustees. I think the constitutional amendment of 1881 (§ 220), limiting the power of municipal corporations to contract debts over and above two per cent. of their taxables, applies to past as well as future debts—that is to say, if a town is indebted two per cent. on its taxables it can incur no farther debt; if indebted one and three-fourths per cent., it can incur a farther debt of one-fourth per cent.—*Baldwin, Atty. Gen.*

SEC. 4489. Use of proceeds. 2. The proceeds of the sales of such bonds shall be paid to the said school trustees, to enable them to erect or complete such building or buildings and pay such debt. But before payment to them, such school trustees shall file with the county auditor a bond, payable to the State of Indiana, in a sum not less than the full amount of the said money so to be paid to them, and with security to be approved by said auditor, conditioned for the faithful and honest application of such money to the purpose for which the same was provided; and such trustees, and their surety or sureties, shall be liable to suit on such bond for any waste, misapplication, or loss of such money, in the same manner as now provided for waste or loss of school revenue.

Bond of school board. The bond required to be given by the school trustees is additional to those already given by them (§ 4440), and may be a joint

bond of the three members of the board, equal in amount to the proceeds turned over to them, but they must be severally bound for the whole amount.—*Smart, Supt.*

[1875, p. 29. Approved and in force March 11, 1875.]

Sec. 4490. Special tax. 3. In addition to levying the tax by cities or incorporated towns for general purposes, now authorized by law, the common council of any such cities, and boards of trustees of any such incorporate towns as shall avail themselves of the provisions of this act, are hereby authorized and required to levy, annually, a special additional tax, at the same time and in the same manner as other taxes of such city or town are levied, sufficient to pay the interest and principal of said bonds falling due; which additional special tax shall be assessed and collected as the taxes for state and county revenue are assessed and collected. The treasurer of said city or town shall keep accurate account of the revenue arising from said special tax, and shall in his reports, when required by the city or town authorities, show the amount thereof received, the amount disbursed, and the amount thereof, if any, remaining delinquent. He shall pay out the same only by the authority of the common council of said city or board of trustees of such town; and shall permit the same to be applied to no other purpose than the payment of the principal and interest of such bonds; and official bonds of city and town treasurers shall be construed to cover and include revenue arising from this source. Persons residing outside of any such city or town, and electing to be transferred to such town or city for educational purposes, or who shall send their children to the school taught in any such building, shall, with their property, be liable to such tax, as if they resided in such city or town, on all property owned by said person in the township where such city or town is located: *Provided, always,* That nothing in this act shall be construed to prevent the school trustees of such town or city from admitting pupils into such schools from outside such city or town, in their discretion, upon the payment of tuition therefor, and without subjecting the property of their parents to such taxation, when such schools are not crowded and their admission shall, in no way, interfere with the progress of the children within such city or town: *Provided, further,* That the additional special tax, hereby authorized, shall not, in any one year, exceed fifty cents on any one hundred dollars of taxable property and one dollar on each poll.

1. *Section constitutional.* The provision subjecting to this tax persons residing outside the town or city, who, though not transferred, send to the school in the building for which the bonds were issued, is not constitutional, 62 Ind. 291.

2. *Levy and collection.* The tax is to be "levied" as other taxes of such city or town are levied, and "assessed and collected" as state and county revenue are assessed and collected. I think, under this law, the levy should be made and certified by the municipal authorities, and placed upon the county duplicate for collection. I come to this conclusion because, by the act of 1867, trustees of civil townships, trustees of towns, and the common councils of

cities are authorized to levy a special tuition tax, "which tax shall be assessed and collected as the taxes for state and county revenue are assessed and collected." (§ 4469.) This tax must be collected, it would seem, by the county treasurer, as trustees of civil townships do not collect revenue, and such has been the uniform practice. The act under consideration, using the same language, and having been passed after the construction mentioned had been placed on the act of 1867, I think it should be held that the act of 1873 requires the tax to be collected by the county treasurer.—*Woollen, Atty. Gen.*

3. *Levy obligatory.* It is the duty of trustees to levy annually a special additional tax sufficient to pay the interest and principal of bonds issued for school buildings and falling due, and where it appears that they have failed, neglected and refuse to discharge their statutory duty, a writ of mandate is the proper legal remedy, 86 Ind. 17.

4. *Admitting non-residents to schools.* The proviso that this statute shall not prevent the admission to the particular schools in question of children residing outside the corporation, on payment of tuition, recognizes and by implication authorizes the custom of admitting such pupils to all the schools. The rights of the children of the corporation must always be considered first, and must never be sacrificed for the sake of the tuition money of non-residents. —*Holcombe, Supt.*

5. *Location of school-house.* As a rule, the school grounds and school buildings of a corporation should be located within its corporate limits; but the bonds of such a town, negotiated and sold to procure means for the erection and completion of a school-house for the town are not void merely because such school buildings are not located within the corporate limits of such town, 86 Ind. 17.

6. *Legalizing act.* Section four of the above act legalized all bonds previously issued for the purpose of building school-houses; and this section was held constitutional, 86 Ind. 17.

[1879 S., p. 86. Approved and in force March 20, 1879.]

SEC. 4491. Condition before building. 1. Before the school trustees of any incorporated town or city in this State shall purchase any ground for school purposes, or enter into any contract for the building of any school building or buildings, they shall file a statement with the trustees of such incorporated town, or common council of such city, showing the necessity for such purchase of ground, or the erection of such building or buildings, together with an estimate of the cost of such ground or building or buildings, and the amount of means necessary to be provided to pay for such ground or building or buildings. And they shall not purchase any ground, or enter into any contract for the building of any school building or buildings, until such action be approved by the trustees of such incorporated town, or by the common council of such city. *Provided, however,* That there shall be nothing in this act so construed as to affect any purchase of grounds, or contract made for the erection of any building or buildings, for school purposes, prior to the taking effect of this act.

[1879 S., p. 95. Approved March 31, 1879, and in force May 31, 1879.]

SEC. 4492. Surplus special school revenue. 1. It shall be the duty of the board of school trustees of any city or incorporated town in this State to pay over to the common council or board of school trustees of such city or town any surplus special school revenue in the hands of such school trustees, not necessary to meet

current expenses; such excess of the revenue aforesaid to be applied for the payment of the interest or principal, or both, of any indebtedness incurred under the provisions of the act of March 8, 1873, authorizing cities and incorporated towns to negotiate and sell bonds to procure means to erect and complete unfinished school buildings, and to purchase any ground and building for school purposes, and to pay debts contracted for the erection and purchase of buildings and grounds.

[1889, p. 101. Approved and in force March 5, 1889.]

Sec. 4492*a*. Bonds in cities. 1. Boards of school commissioners in all cities of this State having thirty thousand or more inhabitants according to the United States census for the year eighteen hundred and seventy, are hereby authorized to prepare, issue and sell bonds to secure loans not exceeding in the aggregate, at any one time, the sum of two hundred and fifty thousand dollars, in anticipation of the revenue for purchasing grounds and building school-houses, to bear such rate of interest, not exceeding six per cent. per annum, and payable at such time within ten years from date as the board may determine; and the money obtained as a loan on any such bonds shall be disbursed by the order of said board in payment of indebtedness incurred in the purchasing of grounds, or building of school-houses, or in refunding any bonds or other evidence of indebtedness issued for such purpose. Such bonds may be issued in such denominations and in such sums as the board of school commissioners may deem to be expedient: *Provided*, That at no time shall the amount of such bonds so issued by any such board of school commissioners, then outstanding, exceed said sum of two hundred and fifty thousand dollars: *And provided, further*, That such bonds shall not be sold for less than their par value. [El. Sup. § 1264.]

Sec. 4492*b*. Laws repealed. 2. All laws and parts of laws inconsistent herewith are hereby repealed. [El. Sup. § 1265.]

ARTICLE 7—SCHOOLS AND SCHOOL-HOUSES.

SEC.
4493. Bible.
4494. Uniformity as to time—Numbering.
4495. Calendar.
4496. Colored children.
4496*a*. Indigent children.
4496*b*. Appropriation for indigent children.
4497. Branches taught.
4497*a*. Kindergartens.
4497*b*. Night schools.
4497*c*. Who may attend.
4497*d*. Manual training schools.
4497*e*. Teachers—Regulations.
4497*f*. Tax levy.
4498. Voters' meeting—School director.
4499. Other meetings—Powers.
4500. Petition for school-house.
4500*a*. Doors must swing outward.
4501. Teachers, employment and dismissal.
4502. Special examination.
4503. Director's duties.
4504. He has charge of school-house.
4505. Visits school—May exclude pupils.
4506. Appeal to trustee.
4507. Insulting teacher.
4508. Title of school property.
4509. Use of school-house.
4510. Use of school-house.
4511. School-house, when sold.
4512. School-house for several townships.
4513. Cost of erecting.
4514. Donations and bequests.
4515. Majority of voters.
4516. Sale of bonds.
4517. Site for school-house—Eminent domain.
4518. Appraisers.
4519. Appraisement—Payment.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4493. Bible. 167. The Bible shall not be excluded from the public schools of the State.

1. *Note.* The Bible, without note or comment, is installed in the common schools of Indiana. Its continuance as the moral class-book in these nurseries of her future citizens will as surely mark the period of her prosperity and grace the zenith of her glory, as its exclusion would prove the precursor of her decline, the herald of her shame.—*Mills, Supt.*

2. *Teacher independent.* Neither the examiner nor the trustee should ever inquire into the peculiar religious belief of a teacher, yet an examiner should not license an immoral person, nor one who is a scoffer at the teachings of the Bible and things sacred.—*Fletcher, Supt.*

Our law, therefore, wisely leaves the whole matter of Bible reading and prayers with the good judgment and conscience of the teachers. To obligate them by contract to read the sacred scriptures and hold prayers in their schools would be in exceedingly bad taste, if not sacrilegious; to refuse them the right, when they, in good faith and conscience, desire to do so, would be the very worst of tyranny.—*Hopkins, Supt.*

3. *Decisions.* Since some of the above notes were written, several decisions of the courts have been made upon the subject of reading the Bible in the public schools, which we proceed to note. Thus it has been decided that a school board could require the reading of the Bible, and expel a pupil who refused to do so, even though such child was a Catholic and declined to read because it was not permitted to read the Douay version, but expressing a willingness to read that version, 38 Me. 379, S. C. 61 Am. Dec. 256. So a rule requiring that school be opened each morning with reading from the Bible and prayer, and that during the prayer each scholar should bow the head, unless the parent requested that he might be excused from so doing, is valid; and a pupil may be expelled who refuses to comply with the rule, his parents declining to request that he be excused from compliance therewith, 12 Allen 127. In Ohio it was held that a board of education, no statute prohibiting it, could prohibit the reading of the Bible and the teaching of the precepts of Christianity in the public schools, 23 Ohio St. 211, S. C. 13 Am. Rep. 235. Under a provision that "the Bible shall not be excluded from any school or institution in this State, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian," it was held in Iowa that it was a matter of individual option with school teachers as to whether they will use the Bible in school or not, and such use was not prohibited by the state constitution, 64 Ia. 367, S. C. 24 Amer. L. Reg. 252; 52 Amer. Rep. 444. In Wisconsin it has been held that the Bible can not be read in the public schools, though unaccompanied by any comment; for its stated reading is "worship," within the constitutional prohibition that no man shall be compelled to attend, erect, or support any place of public worship, or maintain any ministry, against his consent. Religion, as a system and not as a natural law, can not there be taught in the common schools, but morality and good conduct may be inculcated, 76 Wis. 177; S. C. 44 N. W. Rep. 967, 29 Amer. L. Reg. 286. Yet it has also been held that a school committee could adopt a rule requiring all pupils in the public school to learn the ten commandments, and repeat them once a week; and such a rule was not a violation of the constitutional provision which secures to the citizen liberty of conscience and of worship, 7 Amer. L. Reg. (O. S.) 417.

4. *Irreconcilable.* It is sufficient to say that these various decisions are in irreconcilable conflict with each other.

Sec. 4494. Uniformity as to time—Numbering. 11. All schools in a township shall be taught an equal length of time, as nearly as the same can be done, without regard to the diversity in the number of pupils at the several schools, or the cost of the school; and each of said schools shall be numbered, by the proper trustee, as School No. —.

1. *Equality of term.* All the schools in the township should, if possible, begin and close at the same time. The law does not require that an equal amount of money should be spent in each district. Differences in the number of scholars may require different prices to be paid for teaching different schools.

but all must be taught an equal length of time.—*Larrabee, Supt.* The statute only requires the schools in the townships to be taught an equal length of time, as nearly as the same can be done, 80 Ind. 276. See also 47 Ind. 241.

2. *Revenue not apportioned.* Under the late law [of 1855] the director employed the teacher. To enable him to do this, the trustee was required to apportion the school revenue of his township to the several schools thereof in such a manner as to produce, as nearly as practicable, equality in the length of the schools. Under the present law the trustee can not apportion the money so as to produce this equality before the beginning of the schools, when he will know the cost of each, and can determine the term for which they can be taught for the money on hand.—*Fletcher, Supt.*

See § 4499, *note* 3.

Sec. 4495. Calendar. 163. A school term of three months shall be sixty days, a school month twenty days, and a school week five days.

[1877, p. 124. Approved and in force March 5, 1877.]

Sec. 4496. Colored children. 3. The trustee or trustees of such township, town, or city may organize the colored children into separate schools of the township, town, or city, having all the rights, privileges, and advantages of all other schools of the township, town, or city: *Provided,* That in case there may not be provided separate schools for the colored children, then such colored children shall be allowed to attend the public schools with white children: *Provided, further,* That when any child attending such colored school shall, on examination and certificate of his or her teacher, show to the trustee or trustees of any township, town or city that he or she has made sufficient advancement to be placed in a higher grade than that afforded by such colored school, he or she shall be entitled to enter the school provided for white children of a like grade, and no distinction shall therein be made on account of race or color of such colored child.

1. *State's power—Separate schools.* The system of common schools in this State has its origin in, and is provided for by, the constitution and laws of the State. It is purely a domestic institution, and subject to the exclusive control of the constituted authorities of the State. The Federal constitution does not provide for any general system of education to be conducted and controlled by the Federal government, nor does it vest in the congress any power to exercise a general or special supervision over the States on the subject of education. The classification of pupils on the basis of race or color, and their education in separate schools, involve questions of domestic policy which are within the legislative discretion and control, and does not amount to an exclusion of either class; but since the ratification of the fourteenth amendment of the Federal constitution no system of schools would be general, uniform, and equally open to all, as required by our own constitution (viii 1), which did not provide for the education of the colored children, 48 Ind. 327. See § 4472, *note* 9; 93 Ind. 303; 7 Nev. 342, S. C. 8 Am. Rep. 713; 48 Cal. 36; 21 Ohio St. 198; 93 N. Y. 438; 3 Woods, 177; 18 Mich. 400; 24 Ia. 266; 41 Ia. 689; 71 Ill. 383; 101 Ill. 308; 46 N. J. L. 76; 101 Ind. 490; 83 Ky. 49; 94 N. C. 700; 16 Fed. Rep. 297.

2. *Distance must be reasonable.* The legislature evidently intended by the above section that the colored children should have a right to go to the public schools when in operation, if they desired; and that they should go to separate schools when they were reasonably convenient, but when not convenient, then to the white schools. What is reasonable, under the circumstances, is largely with the trustee, and I could lay down no certain rule by which he should be

governed. A colored child could be required to go a reasonable distance to attend a colored school, although there might be white schools much closer, but when the reasonable distance has been reached, he can not be forced to go beyond.—*Woollen, Atty. Gen.* A pupil who is compelled to go from the extreme corner of a township to the center of that township to obtain school privileges, is practically debarred from such privileges. Such a construction of the above act is evidently in accordance with neither the spirit nor the letter of the law. Hence, I must conclude that it is the intent of the law that not only a school or schools must be provided, but that such school must be located that the distance such colored pupil must travel to reach it shall not be unreasonable, and that, in case this is not done, the colored children must be admitted to the white schools. In determining the reasonableness of the distance which a pupil may be compelled to travel to school, the age and condition of the pupil must be taken into consideration.—*Bloss, Supt.*

3. *Privileges equal.* I think that the expression "all the rights, privileges, and advantages of other schools" clearly makes it the duty of trustees to furnish colored children, as far as may be possible, school privileges for an equal length of time with the whites. I do not see how the consent of the colored people themselves to any other arrangement can relieve the trustees of this duty to the colored children. It is the duty of the State to give them equal educational advantages with white children, whether they demand them or not.—*Holcombe, Supt.*

4. *Discretion.* The discretion given by this section to school officers to establish separate schools for colored children can not be controlled by the courts, in the absence of malice or corruption, nor can the courts compel the admission of a child to a school already overcrowded, nor consider the competency of teachers, nor the necessity of graded schools, nor determine the grade to which a child is qualified to be admitted, 93 Ind. 303; 85 Ind. 213.

[1881 S., p. 580. Approved and in force April 7, 1881.]

Sec. 4496*a*. Indigent children. 3. It shall be the duty of each matron selected and appointed under the provisions of this act to provide the children committed to her care and custody with suitable and sufficient food and clothing, and to give them proper home training and education; and, in furtherance of this object she shall send to the common schools in the districts most convenient to the place where such children are kept, where they shall be received and taught at least three months in each year, all of such children under her care as are of the proper age to be admitted into such schools, and to give personal attention to the instruction of those not of sufficient age to be received into such schools. It shall further be her duty, at all proper times when such children are not in school nor engaged in study, to engage them in some active labor suited to their age and strength, to the end that they may become useful, industrious and self-supporting citizens. [R. S. 1881, § 6105.]

School privileges—Enumeration. Such children are entitled to school privileges in the corporation in which the statute (R. S. 1881, § 6105) establishes their home, and should be enumerated accordingly.—*Holcombe, Supt.*

[1885, p. 125. Approved April 2, 1885, and in force July 18, 1885.]

Sec. 4496*b*. Appropriations for indigent children. 1. The boards of commissioners in the several counties of this State are hereby authorized to make suitable appropriations for the education, in the common school branches of learning, of the pauper children

of their respective counties whenever, in the judgment of the board of commissioners justice to the school district or districts wherein such pauper children are kept demands such assistance; and all expenditures, authorized by this act, shall be made and paid out of the county treasury, on warrants drawn by the auditor on the order of the board of commissioners: *Provided*, That where there is no provision for a matron, or an insufficient number of children to require the services of a matron or the establishment of a separate school for the inmates of such asylums, it shall be the duty of the board of commissioners to require the superintendent of such asylum to send such children to the township schools. [El. Sup. § 1304.]

Note. Section 4496*a* requires the matron, whenever such a person is employed, to send all the indigent children of school age who are in her charge to the common schools in the districts most convenient. This additional section requires the superintendent of the county asylum to send such children to school in like manner. All the indigent children maintained by the county are thus assigned to the public schools. They should, therefore, be enumerated by the school corporation in which they are maintained, so that the corporation may receive the amount of common school revenue apportioned for them by the county auditor. But as such children represent no property from which the corporation may derive any revenue from local taxation, the county commissioners are empowered, and it is their duty, to appropriate such amounts as may seem to them just for the share of such children in the special school and local tuition revenues.—*Holcombe, Supt.*

[1869, p. 40. Approved May 5, 1869, and in force August 16, 1869.]

Sec. 4497. Branches taught. 147. The common schools of the State shall be taught in the English language; and the trustee shall provide to have taught in them orthography, reading, writing, arithmetic, geography, English grammar, physiology, history of the United States, and good behavior, and such other branches of learning and other languages as the advancement of the pupils may require and the trustees from time to time direct. And whenever the parents or guardians of twenty-five or more children in attendance at any school of a township, town, or city shall so demand, it shall be the duty of the school trustee or trustees of said township, town, or city to procure efficient teachers and introduce the German language, as a branch of study, into such schools; and the tuition in said schools shall be without charge: *Provided*, Such demand is made before the teacher for said district is employed.

1. *Trustee's duty—Mandate.* In a circuit court the plaintiff asked for a writ of mandate to compel the defendants to have their children taught algebra and Latin in an ordinary district school. The court issued the mandate in regard to algebra, and refused it in regard to Latin, solely on the ground that the plaintiffs had not made a suitable demand on the trustee in regard to that study, holding that it was his duty to cause Latin to be taught, if the attainments of the pupils required it, and that he could be compelled to do so by suitable proceedings. The court argued that sections 4497 and 4499 were not inconsistent with each other. The intent of the legislature was that "other branches of learning and other languages" should be taught in the public schools whenever the pupils therein were sufficiently advanced in the elementary branches,

and in order that the legislative intent might be made effective two modes of acting were provided for: (1) The voters were empowered to act. But, lest from any cause they failed in their duty and left those entitled to the benefits of the public schools without a remedy, then (2) The school trustees should act, and, they being public officers, could be compelled by the courts to perform their duty in case they neglected to do the same.—Grubbs *vs.* Williams, Johnson Co., 1880.

2. *Additional studies.* It has been asked whether it is the duty of school trustees to provide a course of study adapted to the preparation of pupils for college. The question should be answered in the affirmative. It is fair to assume that the trustees must provide suitable instruction for all the children who have a right to attend school; that is, they must afford them such instruction as their attainments demand. If a child has mastered all the primary branches, and, being less than twenty-one years of age, still desires to attend school, the trustees must provide suitable instruction for him. It is not reasonable to expect him to spend further time on branches which he has mastered. The fact that the law permits children to attend school till they are twenty-one years of age is presumptive proof that the trustees may be required to furnish such instruction as is suitable to their attainments till they reach that age. I think the argument here adduced equally applicable to trustees in cities as to those in townships, as the language of the statute applies to both alike.—*Smart, Supt.*

3. *Order of studies.* The school law provides that instruction shall be imparted in certain studies, the German language under certain circumstances being included in the list. The time at which these studies shall be commenced, the order in which they shall be taken up, and the length of time devoted to each, are matters which are and must be left to the trustee or school board. It is their duty to act upon a regular petition, but to act in the way which in their discretion seems most practicable.—*Holcombe, Supt.*

4. *Teacher's contract.* If the trustee had employed a teacher for the term, or school year, before the patrons of the district petitioned him to have the German language taught in the school, then he was justified in paying no attention to their petition.—*Baldwin, Atty. Gen.*

5. *German a branch of study.* The plain requirement of the law is that the common schools shall be taught in English, and that under certain circumstances the German language may be introduced as a branch of study. It is not contemplated that German shall be used as the medium of communication and instruction in the schools. That would be at variance with the purpose of our schools. But in the midst of a dense foreign population it may be impossible to conduct a school in English. The law never requires the impossible. But it is the duty of officials and citizens to conform to the law in all respects as nearly as circumstances permit. Now, the German children of Indiana are as much entitled to school privileges as any others, and it is often necessary that they receive instruction through the medium of their native language. But when such is the case the teacher should be required to teach the children the English language as rapidly as it can be done, and to change the language of the school as soon as possible from German to English, making the latter the medium of communication. It follows that no person should be employed as a teacher of German children who is not able to pursue this course, for which the ability to speak English is essential. Indeed, so important is a thorough knowledge of English to such teachers that they ought to be able to write their examination in that language, and there is no reason for exempting them from examination in any of the eight branches.—*Holcombe, Supt.*

6. *When and where German must be taught.* It is the duty of the school trustees (and of the school commissioners in the city of Indianapolis) to introduce the German language as a branch of study into "any school" whenever the parents or guardians of twenty-five children in attendance demand it; but not necessarily into every school-room of such school; and they may be compelled to do so by mandate. Introducing German into the last years of a graded school is not a compliance with the statute. When a proper demand has been made, all the children attending that school are entitled to study German, if there are funds sufficient to secure a proper teacher; and the school

trustees can not evade the duty imposed upon them, to have this language taught, by exhausting the school funds in having taught studies that are plainly optional, such as music, botany, Latin, and the like. Board of Commissioners *vs.* State *ex rel.* Sander, 27 N. E. Rep. 61.

7. *Music.* A rule, prescribed by the superintendent of the free graded schools of a city, with the sanction of the trustees, that the pupils in the high school department shall at stated intervals employ a certain period of time in the study and practice of music, for which they shall provide themselves with a prescribed book, is an exercise of discretionary power conferred by law, and unless the regulation is shown to be unreasonable, or a satisfactory excuse for failing to comply therewith is given, mandamus will not lie to compel the school authorities to re-admit a pupil who has been suspended for disobedience thereof, 108 Ind. 31; 44 Ia. 564.

[1889, p. 355. Approved March 9, 1889, and in force May 10, 1889.]

Sec. 4497*a*. Kindergartens. 1. In addition to other grades or departments now established in the common schools of the State, the board of trustees of any incorporated town or city are hereby empowered by law to establish, in connection with the common schools of such incorporated town or city, a kindergarten or kindergartens for the instruction of children between the ages of four and six, to be paid for in the same manner as other grades and departments now established in the common schools of such incorporated town or city: *Provided, however*, That no money accruing to such incorporated town or city from the "school revenue for tuition fund" of the State shall be used to defray the tuition and other expenses of such kindergarten; but the same may be defrayed from the local tax for tuition and the special school revenue of said incorporated town or city. [El. Sup. § 1281.]

[1889, p. 187. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4497*b*. Night schools. 1. In all cities having a population of three thousand, or more, according to the census of 1880, the school trustees of such cities shall keep and maintain a night school, between the hours of seven and nine and a half o'clock P. M., during the regular school terms as a part of the systems of common schools whenever twenty or more inhabitants of such city having children between the ages of fourteen and twenty-one years of age, or persons over the age of twenty-one years of age, and who, by reason of their circumstances, are compelled to be employed or have their children employed during the school days to aid in the support of such families who desire to and who shall attend such school, shall petition such school trustee so to do. [El. Sup. § 1282.]

Sec. 4497*c*. Who may attend. 2. All persons between the ages of fourteen and thirty, who are actually engaged in business or at labor during the day, shall be permitted to attend such school. [El. Sup. § 1283.]

[1891, p. 348. Approved and in force March 7, 1891.]

Sec. 4497*d*. Manual training schools. 1. In all cities of the State of Indiana having a population of one hundred thousand or over, as shown by any census taken by lawful authority, it shall be lawful for the board of school commissioners, or other school authorities, having charge and management of the common schools of said city to establish in connection with and as part of the system of common schools therein, a system of industrial or manual training and education, wherein shall be taught the practical use of tools and mechanical implements, the elementary principles of mechanical construction and mechanical drawing.

Sec. 4497*e*. Teachers—Regulations. 2. Such board of school commissioners, or other school authorities, upon establishing such system of manual or industrial training and education, shall employ competent instruction in the various subjects to be taught, and establish such general rules and regulations for the admission of pupils and the conduct of the schools wherein the same shall be taught, as in their judgment will produce the best results, and give instruction to the largest number of pupils practicable. They may provide for such instruction in separate rooms or separate buildings, as in their judgment may be most advantageous.

Sec. 4497*f*. Tax levy. 3. Any such board of school commissioners, or other school authorities, having decided to establish such system of industrial or manual training, shall have authority, in addition to all other taxes now authorized to be levied, to levy a tax of not exceeding five cents on each one hundred dollars of property liable for taxation for school purposes, to be levied and collected as other taxes for school purposes are levied and collected, for the purpose of purchasing grounds and erecting buildings, or for renting buildings, wherein such instruction shall be given, the purchase of all necessary tools, implements and apparatus, and for the payment of instructors, and other expenses incident to the maintenance thereof: *Provided*, That no portion of the taxes so levied and collected shall be applied to any other purpose.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4498. Voters' meeting—School director. 25. The voters shall meet, annually, on the first Saturday in October, and elect one of their number director of such school; who shall, before entering upon duty, take an oath faithfully to discharge the same. The director so elected shall, within ten days after said election, notify the trustee of his election; and, in case of failure to elect, the trustee shall forthwith appoint a director of said school. But any director so appointed may be removed, upon a petition of three-fourths of the persons attached to said school who are entitled to vote at school meetings.

1. *Voters at school meetings.* Voters at the school meetings of a district are all tax-payers, male and female, except married women and minors, who have been listed as parents, guardians, or heads of families, and attached to such district. Tax-payers are those persons who are *liable* to pay taxes, either poll or upon property. Any voter at the school meeting [a woman, if unmarried] is eligible to the office of director.—*Buskirk, Atty. Gen.*

Transferred persons are voters in the district to which they are attached, § 4473.

2. *The director.* The selection of a director should be a matter of great care. He receives no pay for his services, and should therefore be one whose interest in the cause of education would lead him to be a frequent visitor of the school and whose knowledge of the wants of the school-room is such that he will see that it is provided with all that will add to the comfort and convenience of the teacher and the scholars.—*Fletcher, Supt.*

If the person elected director refuses to serve, the old director holds over, and if he refuse to hold over, or if at any time the director dies or resigns, a meeting should be called to fill the vacancy. (§ 4499.) The trustee can fill a vacancy only when it is caused by failure of the annual meeting to elect. A person *elected* can not be removed upon petition; but a person appointed must be removed when the demand is properly made.—*Bloss, Supt.*

3. *Cities.* This section does not apply to cities nor to towns, 42 Ind. 200.

[1873, p. 68. Approved and in force March 8, 1873.]

SEC. 4499. Other meetings—Powers. 26. The voters at school meetings may hold other school meetings at any time, upon the call of the director or any five voters. Five days' notice shall be given of such meeting, by posting notices in five public places in the vicinity; but no meeting shall be illegal for want of such notice, in the absence of fraud; and the legality of such proceedings, if called in question, shall be determined by the trustee of the township, subject to an appeal to the county superintendent, whose decision shall be final. Such school meetings shall have power to determine what branches, in addition to those mentioned in section thirty-four of this act [§ 4425], they desire shall be taught in such school, and the time at which such school shall be taught: *Provided, however,* That the tuition revenue apportioned to the school shall be expended within the school year for which it was apportioned: *Provided, further,* That such school year shall begin on the first Monday of July. Such school meetings shall likewise have the power to fill vacancies that may occur in the office of director; to direct such repairs as they may deem necessary in their school-house; to petition the township trustee for the removal of their school-house to a more convenient location, for the erection of a new one, or the sale of an old one and the lands belonging thereto, and upon any other subject connected therewith; and at such meetings all tax-payers of the district shall be entitled to vote except married women and minors: *Provided,* That nothing herein contained shall prevent the trustee from exercising a sound discretion as to the propriety or expediency of making such repairs, removing or erecting school-houses, and the cost thereof.

1. *School meetings.* The machinery of school meetings and school directors is unprovided for and unknown in cities and towns, 42 Ind. 206.

2. On determination of branches see § 4497 and notes; on filling vacancies see § 4498, *note* 2.

3. *Apportionment.* The apportionment here mentioned is not an apportionment in the strict sense in which the term is used when referring to that made to the counties by the superintendent of public instruction, and that made to cities, towns, and townships by the county auditor; but merely means an informal estimate by the trustees of the amount of money needed for each school or district. (§ 4494, *note* 2.) A district is not a corporation, and does not acquire a right to any definite share of the revenue, which belongs to the township as a whole. If, therefore, a teacher terminates his engagement so near the close of a term that it is inexpedient to employ another person to complete the term, the money designed by the trustee for that school remains in his hands, to be applied to payment of expenses of the other schools in his corporation, and that part of it derived from the tuition revenue must be expended within the school year.—*Holcombe, Supt.*

4. *Location of school-house—Appeal.* The action of a school meeting, with reference to the erection, repair or removal of a school-house, etc., has only the force of a request, and therefore never binds the trustee to any course of action. —*Smart, Supt.*

A township trustee can not by mandate be required to locate and build a school-house on land that does not belong to the township, notwithstanding the county examiner, on an appeal from his decision, has rendered a judgment requiring him to erect a school-house on said land. It is not enough that a petition by certain inhabitants of the proper school district to the trustee, praying for such location and building, states that the land will be deeded to the township on the acceptance of the location by the trustee and his order to build, 44 Ind. 323. See § 4517–4519; 90 Ind. 123.

5. *Appeal—Trustee's discretion.* The decision of the examiner is, doubtless, final so far as the particular case before him is concerned. But when the examiner, upon a case appealed to him, has established the location of a school-house, is that location to be forever thereafter permanent? Is there no power left in the trustee, for it must be in him if in any one, to subsequently change the location, in order to meet the varying wants of the district? We must hold that the location thus made by the examiner shall forever remain unalterably fixed, or that it may be subsequently changed by the trustee. If it may be changed by the trustee at all, it may be done at any time after the action of the examiner. Mere lapse of time, whether long or short, can not affect the question. As before observed, we think it clear that the trustee can not make the change.—*Smart, Supt.* See § 4537.

6. *Mandate.* Where the county superintendent reversed the decision of the trustee and granted the prayer of a petition to locate a school-house at a certain place, it was held that such trustee might be compelled by mandate to build it at that place, 21 Ind. 317; but this decision was practically overruled, although not referred to, by a latter decision, where the following decision was made: On appeal, a county superintendent reversed the decision of a township trustee, locating a school-house. Again, on appeal, he reversed another decision by such trustee, refusing to locate the school-house at a place designated by the superintendent in his first reversal. Thereupon the trustee located the same at an entirely different place, but near where he had first located it. It was decided that an injunction preventing such location would not lie; and also that a county superintendent can not make such location, and that even his decision, on appeal, against a location, is final only for the time being, 67 Ind. 397. See *note* 7.

7. *Abolishing school district—Furniture—Private school-house.* A trustee has no authority to provide furniture for a room for school purposes, or employ teachers for service therein, unless such room is owned or leased by the school township; and even if the county superintendent, on appeal, direct him to do so, he may properly disobey the order, and mandate will not lie to compel him to obey it. After a trustee has, on appeal, been ordered by the county superintendent to provide furniture for the school-house of a district, he may at once abolish the district and provide proper school facilities for the people thereof in other districts, and then disregard the order of the superintendent, 90 Ind. 123. See § 4444, *note* 9.

8. See § 3333, subdiv. 17.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4500. Estimate of expenses. 27. When such meetings shall petition the trustee in regard to repairs, removal, or erection of a school-house, they shall also furnish to such trustee an estimate of the probable cost of such repairs, removal, or erection.

Petition of patrons. A petition for the location, etc., of a school-house may be signed and presented to the trustee, and an appeal taken therefrom, although such petition did not originate, nor was it signed, at a school meeting, 21 Ind. 317.

[1891, p. 111. Approved and in force March 5, 1891.]

Sec. 4500*a*. Doors must swing outward. 1. Whoever, being the owner, manager, lessee, trustee, or person having the charge of any theatre, opera-house, museum, college, seminary, church, school-house, or other public building, refuses or neglects to cause all the doors thereof, constructed for the purpose of ingress and egress, whether inner or outer doors, to be so hung that the same shall swing outwardly, shall be fined in any sum not exceeding one thousand dollars nor less than ten dollars, to which may be added imprisonment in the county jail for any period not exceeding six months: *Provided*, That this section shall not apply to the outer doors of one-story churches and school-houses.

1. Amending § 2155 of R. S. 1881.

[1883, p. 30. Approved and in force February 27, 1883.]

Sec. 4501. Teachers, employment and dismissal. 28. Trustees shall employ no person to teach in any of the common schools of the State of Indiana, unless such person shall have a license to teach, issued from the proper state or county authority, and in full force at the date of the employment. Any teacher who shall commence teaching any such school without a license, shall forfeit all claim to compensation out of the school revenue for tuition for the time he or she teaches without such license; but if a teacher's license shall expire by its own limitation within a term of employment, such teacher may complete such term of employment within the then current school year. The said trustee shall not employ any teacher whom a majority of those entitled to vote at school meetings have decided, at any regular school meeting, they do not wish employed; and at any time after the commencement of any school, if a majority of such voters petition such trustee that they wish the teacher thereof dismissed, such trustee shall dismiss such teacher, but only upon due notice, and upon good cause shown; but such teacher shall be entitled to pay for services rendered. [El. Sup. § 1277.]

1. *License essential.* A valid contract for the teaching of a public school can not be made by a trustee with one who, at the time, has no license to teach in the county, and the subsequent procurement of a license does not validate the contract, 79 Ind. 575. And a person can neither recover compensation for services rendered as teacher, nor damages for breach of contract for such services, unless he were licensed to teach as prescribed by the statutes, 75 Ind. 118.

See also 26 *id.* 337, and 69 *id.* 80. A contract with a teacher for "good wages" is too indefinite to be enforced by the courts, 26 N. E. Rep. 686.

2. *Liabilities of trustees.* If a trustee employs or permits to begin teaching in a public school any person who has not a valid license as required by law, the trustee will be liable on his bond for the misapplication of any school revenue paid to such unlicensed person; and the county superintendent or any interested citizen may bring an action against the trustee to recover for the corporation the amount so misapplied.—*Holcombe, Supt.*

If the father or guardian of a minor employed to teach has given him what is popularly called "his time," the minor can sue for and recover the value of his services, and the trustee can pay him the money earned without fear of having to pay it to such father or guardian. But if the father or guardian has not given him "his time," then only the father or guardian is entitled to receive pay for the services rendered, and either of them is entitled to sue for the same. In all cases, before payment is made, require the father or guardian to give a receipt, or else require him to consent in writing to the payment to the minor.—*Baldwin, Atty. Gen.*

3. *Teachers' Contracts—Actions.* A teacher contracts with a school township through its trustee, and although the trustee squanders the township funds and his bond is worthless, yet the township is liable to pay the teacher as specified in the contract. A verbal contract with a school trustee to teach a school is as binding as a written contract.—*Baldwin, Atty. Gen.*

A contract to teach school, which is left blank in respect to the terms of employment, and contains no stipulation as to how the blanks shall thereafter be filled is not binding; but if treated as a contract of employment for an indefinite time, the damages for its breach would be nominal only, 77 Ind. 447.

The fact that a trustee has no funds is no defense to a teacher's claim for compensation, nor an excuse for refusing to allow him to complete his term of employment, 80 Ind. 276.

A teacher of a common school is entitled to compensation, if failure to actually conduct the school each day of the term was caused by the act or omission of the school authorities; and where the evidence shows that a strict performance by the teacher of the conditions of the contract has been prevented or waived by such act or omission, a recovery can not be defeated by such failure, 74 Ind. 127.

The licensing of a minor to teach in our public schools does not remove his disability to bind himself by a contract to teach school. Any contract such minor may make with a school township is binding upon the township, and such minor may sue the township and recover the value of his services, even though that amount be more than the price agreed upon. But the minor is not bound to teach the school unless he sees fit, and he can receive pay only for the work actually done.—*Baldwin, Atty. Gen.* See 2 above.

4. *Protest against teacher.* A protest against a teacher to be binding must be made at a school meeting regularly called and conducted according to law before the employment of the teacher, and by a majority of all the persons entitled to vote at such meeting, not merely a majority of those present. The persons entitled to vote at the school meeting of a district are all tax-payers, male and female, except married women and minors, who have been listed by trustees as parents, guardians, or heads of families, and attached to such district (§ 4498, *note* 1). The patrons are by law entitled to protest against the employment of any teacher. It is the trustee's duty to allow them an opportunity to make their protest in the manner provided by law, and if he is notified that a school meeting will be called for that purpose, any contract he may make with a teacher will be subject to the action of such meeting. Patrons are not empowered to select teachers (§ 4444, *note* 2), and they can not effect a selection indirectly by protesting against all the world except a certain person. The protest must name definitely the person or persons against whom it is directed. —*Holcombe, Supt.*

5. *Dismissal of teachers.* A teacher employed for a definite time may be discharged for incompetency; but if he is competent, and is, in all things, fulfilling his contract, he can not be, without his consent, 42 Ind. 200. But when

the teacher is improperly discharged the school corporation, not the trustees personally, is liable, 51 Ind. 206.

This is the language of the supreme court, and, although made with reference to a city, is an enunciation of the common law principle, and is, I think, applicable to the case of dismissal of a teacher by a township trustee, without a petition from the patrons. If the teacher breaks the contract, it seems to me that the trustee should not be bound by it. The law *requires* the trustee to investigate charges made against a teacher by a majority of the voters of the district, but it is held that he *may* investigate charges made by any number of responsible patrons. The decision of the supreme court upon an analagous question in Thayer *vs.* State, 21 Ind. 317, justifies this opinion.—*Smart, Supt.*

The trustee should investigate the truth or falsity of the matter alleged for the dismissal of a teacher. For this purpose he should cause the parties—petitioners and teacher—on an appointed day to appear before him, when he should hear the testimony *pro* and *con*. Any of the causes for the revocation of a license enumerated in § 4426 is likewise good cause for the dismissal of a teacher. Peculiar circumstances may sometimes render dismissal proper for other causes.—*Bloss, Supt.*

6. *Holidays.* The Fourth of July, Thanksgiving Day, Christmas, and New Year's are, by universal consent and very general practice, regarded as holidays in this country. Employes in almost all kinds of business are excused from labor on those days and allowed their wages. It would surely be very unreasonable to make the teacher an exception to this general rule.—*Hopkins, Supt.* The teacher is entitled to the usual public holidays, and no deduction should be made from his wages for a failure to teach on those days, 39 Mich. 484.

7. *In cities and towns.* The latter part of this section (concerning the power of school meetings and the employment and discharge of teachers) has no application to cities and incorporated towns. But if, in such cities and towns, the teacher be incompetent, or fail in the duties of teacher, he may be dismissed by the school trustees, 42 Ind. 200.

8. *For what term may be employed.* School officers have the power to make contracts for the employment for terms to commence after the expiration of the current year, 106 Ind. 478; 36 Conn. 280; 67 N. Y. 36; 27 N. E. Rep. 303; *contra*, 87 Ill. 255; 92 Ill. 293; 4 Ill. App. 224; 8 Jones (N. C.) L. 98; but see 5 Hun. 649; 51 Mo. 21; 44 Mich. 500; 33 Ia. 105. Where school trustees, with the acquiescence of the school town, continue to act as such after the expiration of their term, and before their successors are appointed, they are officers *de facto*, and a contract with a teacher entered into by them is binding on the town, 27 N. E. Rep. 303.

9. *Corporeal punishment.* A teacher, within the limits of his jurisdiction and responsibility, may exact compliance with all reasonable commands, and may, in a kind and *reasonable* spirit, inflict corporeal punishment upon a pupil for disobedience. The punishment ought to be within the bounds of moderation and apportioned to the gravity of the offense, but when complaint is made, the *judgment of the teacher* as to what the situation required should have weight, as in the case of a parent under similar circumstances, and the reasonableness of the punishment must be determined upon the facts of the particular case. In the case of the chastisement of a pupil, the *intent* necessary to support a charge of *assault and battery* may be inferred from the *unreasonableness* of the method adopted or the excess of force employed, the burden of proving which rests upon the State or prosecution. In such case, in addition to the general *presumption* of innocence, the teacher, in support of his defense, has the presumption of having done his duty. The legitimate *object of chastisement* is to inflict punishment by the pains which it causes as well as by the degradation which it implies; and it does not follow that a chastisement was cruel or excessive because pain was produced or *abrasion of the skin* resulted from a switch used by the teacher. When a proper weapon has been used, the *character of the chastisement*, with reference to any alleged cruelty or excess, must be determined by the nature of the offense, the age, physical and mental condition, as well as the personal attributes, of the pupil, and the deportment of the teacher, 113 Ind. 276; 69 Ind. 295, S. C. 35 Amer. Rep. 216; 4 Ind. 290; 4

Gray, 36; 32 Vt. 114; 68 N. C. 322; 5 Pa. L. Jr. Rep. 78. In one case it was said: "The law having elevated the teacher to the place of the parent, if he is still to sustain that sacred relation, it becomes him to be careful in the exercise of his authority, and not make his power a pretext for cruelty and oppression. Whenever he undertakes to exercise it, the cause must be sufficient, the instrument suitable for the purpose; the manner and extent of the correction, the part of the person to which it is applied, the temper in which it is inflicted, all should be distinguished with the kindness, prudence and propriety which becomes the station," 4 Ind. 290, 632. See 32 Vt. 114; 4 Gray, 36; 3 Head. (Tenn.) 455; 19 Vt. 91; 5 Pa. L. Jr. Rep. 78; 1 City Hall Rec. 52; 40 Barb. 541; 3 Quarterly L. Jr. 92; 45 Ia. 248; S. C. 50 Ia. 145, S. C. 43 Am. Rep. 128. If no rule of the school board prevents it, the teacher may punish a pupil within the bounds prescribed by law, even though he have an *instruction from the parent* that the child must not be punished, 3 Tenn. L. Rep. 19. In case the punishment is proper the *father* is not excusable if he *assault the teacher* because of it, 1 City Hall Rec. 52. A *pupil over the school age* is subject to punishment as any other pupil, 45 Ia. 248, S. C. 24 Am. Rep. 769; 27 Me. 266. The teacher is not confined to *mere whipping;* he may impose a reasonable restraint upon the person of the pupil, either by way of prevention or punishment of disorderly conduct, 4 F. & F. 656; Cooley on Torts, 171. The teacher is the absolute judge of the *kind of punishment*, with the limitation that it must be reasonable and usual, and not destructive of the object of the relation, or subversive of the contract under which the relation exists, 40 Barb. 541; Ware, 219, 230. "The *legal objects and purposes of punishment* in school are like the objects and purposes of the State in punishing a citizen. They are three-fold: First, the reformation and the highest good of the pupil; second, the enforcement of correct discipline in schools; and third, as an example to like evil doers," 50 Ia. 145, S. C. 32 Am. Rep. 128. No punishment is justifiable unless it is inflicted for some *definite offense* which the pupil has committed; and the pupil must understand what he is being punished for. If he does not know why the punishment is inflicted, the act is unlawful; it is subversive and not promotive of the true object of punishment, "and can not be justified," 50 Ia. 145, S. C. 32 Am. Rep. 128. In the absence of proof the law presumes that the teacher punished his pupil for a reasonable cause and in a moderate and reasonable manner. This presumption, like all other legal presumptions, may be rebutted by proof, 50 Ia. 145, S. C. 32 Am. Rep. 118; 19 Vt. 102; 113 Ind. 276. The teacher has the right to show that the chastisement was reasonable, and for misconduct in school, 45 Ia. 248, S. C. 24 Am. Rep. 769; 79 Ind. 75. "The *welfare of the child* is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may *seriously endanger the life*, limbs or health, or shall disfigure the child, or cause any other permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which correction is authorized. But any correction, however severe, which produces *temporary pain* only, and no permanent ill, can not be so pronounced, since it may have been necessary for the reformation of the child, and does not injuriously effect its future welfare. * * * When the correction administered is not in itself immoderate, and not, therefore, beyond the authority of the teacher, its legality or illegality must depend entirely on the *quo animo* with which it is administered. Within the sphere of this authority the master is the judge when correction is required, and of the degree of correction necessary; and like all others intrusted with discretion he can not be made personally responsible for error of judgment, but only for *wickedness of purpose*," 2 D. & B. (N. C.) 365. But it has also been held that *excessive punishment* can not be justified from the fact that the teacher acted in *good faith* and without malice, honestly believing the punishment was necessary for the discipline of the school and the welfare of the pupils, 32 Vt. 114. Where the teacher beat the pupil, with the consent of the father, so severely that the child died, it was held that he was guilty of *manslaughter*, 2 F. & F. 202.

10. *Illegally dismissing teacher.* A teacher of a school is entitled to *compensation*, notwithstanding his failure to conduct the school *each day* of the term, if such failure was caused by the wrongful act or omission of the township authorities, 74 Ind. 127; and the fact that the trustee had *no funds* with which to pay the teacher after he has taught a part of the time for which he was em-

ployed is no excuse for refusing to allow him to complete his term, nor does it constitute a defense to his claims for services, 80 Ind. 276; 96 Ind. 185; nor is it any defense that the school was taught longer in that district than in the other districts of the township, for that year, and for that reason there was no funds, 80 Ind. 276. Sufficiency of *complaint*, 100 Ind. 268; 107 Ind. 351. If a teacher is *rightfully dismissed* he can not recover for services thereafter, though he takes possession of the school-house and continues to teach, 61 Ga. 413. But if he is *wrongfully dismissed*, or if he leaves school because of the unjustifiable action of the board, he may recover for his whole time, 2 Ill. App. 458; 46 Vt. 452; 55 Mo. 149; unless during the period for which he was employed he earned money elsewhere, or could have earned it by reasonable diligence, in like employment, which may be deducted, on an answer filed to that effect, from what he would have otherwise recovered, 66 Barb. 21. A trustee is *not personally liable* for removing a teacher from a school contrary to the contract, 79 Ind. 576; see 51 Ind. 206. Where an order employing a teacher is passed at a session of the board of school *trustees* it is immaterial that the trustees *signed the contract* at *different times*. Such contract *cannot be annuled* by the subsequent action of the school town in abolishing the department in which he was engaged to teach, 27 N. E. Rep. 303.

11. *Rules and regulations—Expulsion—Liability of school officers.* In the absence of the establishment of any rule by the school board a teacher has the right to adopt a rule to prevent his pupils using *profane language*, *fighting* or *quarreling* on their way *to and from school*, and may punish those infringing the rule by the use of the rod, 85 Mo. 485, S. C. 24 Am. L. Reg. 662; 32 Vt. 114; 23 Tex. App. 386. But neither the board of education, nor the trustee, nor the teacher has the power to require each pupil, when returning to the school after recess, to bring into the school-room a *stick of wood for the fire;* because it is not "needful for the government of the schools," within the meaning of the statute clothing the board with its powers, 63 Wis. 234; S. C. 24 Am. L. Rep. 601. Neither a school board nor a teacher has power over a pupil while at home, 24 Mo. App. 309, and can not make a rule that a pupil shall not attend a *social party*, and expel him if he does, 66 Mo. 286; S. C. 27 Am. Rep. 343; nor prohibit his joining a *college* secret fraternity *society*, 82 Ind. 278. But the various school boards and other educational authorities have *power* to adopt appropriate *rules* and regulations for the government of the schools under their control. It is not necessary that all such rules be *made* a matter *of record* by the school board, or that every act, order or direction affecting their management shall be authorized or confirmed by a formal vote; but any reasonable rule adopted by a superintendent or a teacher not inconsistent with some statute or some other rule prescribed by higher authority is binding upon the pupils. A rule requiring a city superintendent to *visit all the schools* under his charge, and to see that the *best methods* of instruction are adopted, confers upon him authority, if it were otherwise wanting, to order and promulgate such additional reasonable rules as the best interests of the schools may require. A rule requiring *tardy pupils* to remain either in the hall of the school building, which is provided with heat, or in the office of the principal, until the *opening exercises*, lasting from ten to fifteen minutes, are concluded, in order that such exercises may not be interrupted or disturbed, is in itself a reasonble regulation. In the enforcement of all rules for the government of a school due regard must be had to the *health*, *comfort*, *age*, *mental* and *physical condition* of the pupils, and to the circumstances attending each particular emergency, and the condition of the *weather*, the *infirmity of a pupil*, and the like, may require relaxation in their strict management. A school regulation must not only be *reasonable* in itself, but its *enforcement* must also be reasonable under all the circumstances. The habit of *locking the doors* of a school-room *during the opening exercises* is not an unreasonable enforcement, under ordinary circumstances, of a rule requiring pupils to remain in the hall during that time; but if the *weather* is unusually *severe*, and proper steps are not taken for the comfort of children thus excluded, such method of enforcement is unreasonable and improper. A school *officer* is not *personally liable* for a mere mistake of judgment in the government of his school; but to create liability it must be shown that he acted in the matter complained of wantonly, willfully or maliciously. The *detention of a pupil* for a short time after school hours, as a penalty for some omission or mis-

conduct, is one of the recognized methods of enforcing discipline and promoting the progress of the pupils in the common schools, and although the *detention* be *mistaken*, it possesses none of the elements of false imprisonment, unless imposed from wanton, willful or malicious motives, 111 Ind. 472. See 38 Me. 376; 12 Allen, 127; 23 Ohio St. 211. The rules may be enforced by *suspension* and *expulsion* if necessary, 105 Mass. 475; 30 Ia. 429; 31 Ia. 562; 33 Ohio St. 321; 79 Ill. 567; 29 Ohio St. 89. But if the rule is *unreasonable*, and a pupil is punished for a refusal to submit to it, an action will lie, 21 Ohio St. 666. See 48 Cal. 36. Thus a rule requiring a pupil to pay for the wanton and *useless destruction of school property* is unreasonable, and a teacher has no right to enforce such a rule by chastisement, 116 Ind. 11, S. C. 18 N. E. Rep. 266; 77 Mich. 605, S. C. 43 N. W. Rep. 996; 56 Ia. 476. *Mandamus* lies to compel the *restoration* of a pupil illegally suspended or expelled, 77 Mich. 605; 82 Ind. 279; 27 N. E. Rep. 54.

12. *Trustee advancing funds.* A trustee who, in good faith employs necessary and proper teachers—when it is unexpectedly found that the public funds provided are insufficient to pay them in full—advances the deficit from his own means, has a demand against the school township upon which he may recover, 102 Ind. 281.

[1865 S., p. 143. Approved and in force December 20, 1865.]

Sec. 4502. Special examination. 35. If the persons attached to and forming a school district have, at their school meeting, designated other or a less number of branches of learning than those in section thirty-four of this act [§ 4425] mentioned, which they desire to have taught in their school, the trustee, in employing a teacher for said school, shall require said teacher to be examined as to his qualifications to teach the branches of learning required by said school meeting.

See § 4497 and *notes*, and § 4425, *note* 7.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4503. Director's duties. 29. The director of each school shall preside at all meetings of the inhabitants connected therewith, and record their proceedings. He shall also act as the organ of communication between the inhabitants and the township trustee.

Remark. The creation of the office of district director was designed to devolve a certain class of the township trustee's duties, which might very properly and with more promptness be discharged by a local agent in each district, upon a person chosen by the people of the locality immediately interested. Much will depend on the energy, intelligence and promptness of the director. —*Mills, Supt.*

Sec. 4504. He has charge of the school-house. 30. He shall take charge of the school-house and property belonging thereto, under the general order and concurrence of the trustee, and preserve the same; and shall make all temporary repairs of the school-house, furniture, and fixtures, and provide the necessary fuel for the school, reporting the cost thereof to the trustee for payment.

1. *Possession of house.* We think the trustee has the charge and possession of the school-house, for although the director has the charge for certain purposes, he acts under the order and concurrence of the trustee, 47 Ind. 148.

2. *Temporary repairs—Fuel.* The director is the local agent of the trustee, and is subject to his orders. He, however, is to exercise entire control so far as

temporary repairs are concerned, and is to provide necessary fuel. Let us explain what is meant by necessary fuel. It refers not simply to quantity, but also to the quality or fuel and its preparation for use. A tree hauled up to the door is not necessary fuel, nor is a load of good four-foot wood. Necessary fuel means that which is dry, conveniently piled and properly prepared for use. The expense of *preparing* the fuel is to be reported by the director to the trustee, who is to pay the former for it. A teacher is not a wood-hauler, wood-chopper, or wood-sawyer, unless he specially contracts to be such.—*Fletcher, Supt.*

3. *Janitor service.* It is as much the duty of the trustee to see that the fuel is placed in the stove and the school-room made comfortable and neat, as it is to furnish the fuel and brooms for these purposes, or to see that the children are well taught and disciplined when once in the room. How and through whom he shall accomplish these things is just where the law is wisely silent. I can conceive of various ways in which he may accomplish them. He may authorize the director, who is generally chosen because of his proximity to the school-house, to perform the work, and then pay him out of the special school tax; or he may authorize him to employ some suitable person, and compensate the employe in the same manner; or he may employ the teacher himself, and pay him from the same source.—*Hopkins, Supt.*

Unless there is an agreement between the trustee and teacher that the latter is to perform janitor's service, I think he can not be compelled to do so.—*Smart, Supt.*

It is the duty of every school director to put his school-house in a suitable condition for the reception of pupils, and this is as much his duty at the middle of the term, or the last day, as the first day. A school-house is not fit to receive the pupils until the janitor work has been done each day. It is as essential that he should put the school-house in a clean and comfortable condition as it is that he should repair the roof. It being his duty, by consent of the trustee, and not being any part of the teacher's duty, to prepare the school-house in a suitable manner for the reception of the pupils, he has a right to employ the usual agency and pay a sufficient sum to accomplish it. The trustee is therefore empowered to allow a reasonable amount for such expense in providing a janitor for the school-house, and the board of county commissioners can not do otherwise than allow all reasonable bills of the same kind.—*Baldwin, Atty. Gen.*

Sec. 4505. Visits schools—May exclude pupils. 31. He shall visit and inspect the school, from time to time, and, when necessary, may exclude any refractory pupil therefrom; but the exclusion of any pupil from the school for disorderly conduct shall not extend beyond the current term, and may be, in the discretion of the director, for a shorter period.

1. *Refractory pupil.* Directors have the power to exclude refractory pupils from school for the current term, and school trustees of cities and towns have, undoubtedly, the same right. A refractory pupil is one who persistently refuses to obey the reasonable rules and regulations of the school, whether made by the teacher or by the county board. The teacher may temporarily exclude from school a disorderly and noisy pupil. In such case the matter should be reported to the director as soon as possible.—*Smart, Supt.* See § 4501, *notes*.

2. *Exclusion for truancy.* The law provides that refractory pupils may be excluded from school. Truancy is a very great evil, tending in various ways to disturb the order and interrupt the progress of the whole school. A very high authority has declared it the greatest hindrance to the improvement of our schools, and the laws of some States have made it in some sense penal. Considering the magnitude of the evil, it seems scarcely to admit of question that pupils habitually, incorrigibly truant, may be excluded from school for the current term as refractory.—*Hobbs, Supt.* See § 4501, *note* 11.

3. *Teacher's power as to discipline.* The law is well settled, as it seems to us, that the teacher has the right to exact from his pupils obedience to his lawful and reasonable commands, and to punish disobedience. In a recent Wisconsin case it was well said, "In the school, as in the family, there exist on the part of the pupils the obligations of obedience to lawful commands, subordina-

tion, civil deportment, respect for the rights of other pupils, and fidelity to duty. These obligations are inherent in any proper school system, and constitute, so to speak, the common law of the school. Every pupil is presumed to know this law, and is subject to it, whether it has or has not been re-enacted by the district board in the form of written rules and regulations," 69 Ind. 295. See § 4501, *note* 9.

4. *Teacher's authority out of school.* On this difficult subject we are without guidance from our own supreme court, but find sound principles enunciated in the familiar case of Lander *vs.* Seaver, 32 Vt. 114, as follows: "When the child has returned home or to his parents' control, then the parents' authority is resumed and the control of the teacher ceases, and then for all ordinary acts of misbehavior the parent alone has the power to punish." But "though a schoolmaster has, in general, no right to punish a pupil for misconduct committed after the dismissal of school, and the return of the pupil to his home, yet he may, on the pupil's return to school, punish him for any misbehavior, though committed out of school, which has a direct and immediate tendency to injure the school and to subvert the master's authority," as when the pupil, "in the presence of other pupils of the same school used towards the master, in his hearing, contemptuous language, with a design to insult him, and which had a direct and immediate tendency to bring the authority of the master over his pupils into contempt, and lessen his hold upon them and his control over the school." Teachers, therefore, should be very careful how they punish pupils for what they may do or say away from the school premises, and should never undertake to punish for such behavior unless it seems necessary for the preservation of discipline in the school. The teacher can not justly be held responsible for the conduct of pupils when out of his sight or beyond his control, and he should give parents and guardians to understand that he will not attempt to exercise a control which it is their duty to exercise themselves.—*Holcombe, Supt.* See § 4501, *notes* 11 *and* 9.

5. A pupil was expelled for violation of a rule, but reinstated by order of court. He was expelled again for a violation of the same rule. It was held that the second expulsion was not a contempt of court, 26 N. E. Rep. 798.

Sec. 4506. Appeal to trustee. 32. The decision of the director in excluding a pupil shall be subject to appeal to the township trustee, whose decision shall be final.

The parent or guardian or the pupil himself may appeal. No formal documents are necessary, and the trustee has the right to make an investigation upon a verbal statement. But he should make a record of the facts in the case and of his decision thereon.—*Smart, Supt.*

Sec. 4507. Insulting teacher. 162. If any parent, guardian, or other person, from any cause, fancied or real, visit a school with the avowed intention of upbraiding or insulting the teacher in the presence of the school, and shall so upbraid or insult the teacher, such person, for such conduct, shall be liable to a fine of not more than twenty-five dollars; which, when collected, shall go into the general tuition revenue.

Part unconstitutional. The provision that the proceeds of the fine shall go into the general tuition revenue is void, since the constitution (§ 183) makes fines assessed for breaches of penal laws of the State a part of the common school fund.

Sec. 4508. Title of school property. 157. The title to all lands acquired for school purposes shall be conveyed to the township, incorporated town, or city for which it is acquired, in the corporate name of such township, town, or city, which is used for school purposes, for the use of common schools therein. In all

cases in which the title to any such land is vested in any other person or corporation than as above provided, it shall be the duty of the trustee for school purposes of the township, town, or city to procure the title to be vested as in this section provided.

1. *Trust title—Change of trustee.* The corporation (township, town, or city) holds the title in trust for school purposes, and upon the incorporation of a town it becomes the trustee, and entitled to such real estate as lies within its boundaries, 27 Ind. 465; 86 *id.* 582; and mandamus lies to compel a conveyance of it to the new town or city, 109 Ind. 559.

2. *Formation of town—Revenue.* If a town is formed out of a portion of a township the school trustees of the town are entitled to demand and receive of the township trustee the proportion of school moneys belonging to the town, and it is the duty of the township trustee to ascertain the amount and pay it over to the town school board, 64 Ind. 275.

3. *School board—Township trustee.* Under the law, it is clearly the duty of the trustees of an incorporated town to appoint school trustees for the corporation, and I think they can be compelled to do so by a writ of mandate from the circuit court. In case the township trustee continues to control and manage the schools of an incorporated town (no town school trustees having ever been appointed), I think that under the general principle that an officer shall continue to perform his duties till his successor is appointed and qualified, he would be liable on contracts made by him in exercising such control and management.—*Holcombe, Supt.*

4. *Corporate limits—Conditional deed.* A school corporation can not establish a school outside of its territorial limits, 56 Ind. 521. You say that a lot was deeded to a township "for school purposes," and ask if the house built thereon will revert to the original owner if the trustee decides to change the location of the school-house. If the above quotation is all that is expressed in the deed upon that subject, then I think the property will not revert to the original owner. If the deed should say "*so long as used* for school purposes," then I suppose it might revert to the original owner.—*Woollen, Atty. Gen.* See § 4511, *note* 1.

5. *Appropriation for highways.* School grounds and the buildings thereon, held by a township, may be appropriated for a public highway, 88 Ind. 453.

SEC. 4509. Use of school-house. 158. When a school-house is unoccupied by a common school of the State, and the people who form the school at such house desire that a private school be taught therein, and a majority of them make application to the trustee having charge of such house for the use of it for such private school, it shall be the duty of the trustee to permit said school-house to be used for such private school by such teacher as may be mentioned in the application, but not for a longer time than until said house may be wanted for a public school; and such permission and use shall be upon the condition that the teacher employed in said school shall report, in writing, to the trustee—

First. The number of teachers employed, distinguishing between male and female.

Second. The number of pupils admitted into the school within the term, and the average daily attendance.

Third. The cost of tuition, per pupil per month, in said school.

1. *Teacher's report—Care of house.* It is not the intention of this section to deny the trustee the right to permit the use of a school-house for a private school, in the absence of a petition, unless there shall be a protest of a majority of the district against such use. In order to secure proper qualification on the

part of the teacher it is recommended that, other things equal, the house be let to a teacher holding a valid license. To secure the preservation of the house it is recommended that some reliable party should be held responsible to the trustee for proper care of such property, and for repair of all damages. This party may be the teacher or some other, as may be agreed upon. It is hoped that trustees will insist upon reports from teachers, as provided for in this section.—*Hoss, Supt.*

2. *Trustee's discretion.* The people who form the school at such house must be construed to mean the persons entitled to vote at the school meetings. The trustee has no discretion as to permitting the use of a school-house for a private school when applied for as provided in this section. He must permit the use. The teacher occupying a school-house, under such petition, thereby obligates himself to comply with the condition contained in the law as to reporting.—*Hobbs, Supt.*

3. *Appeal to county superintendent.* As the law provides for holding private schools in public school buildings, and prescribes the steps to be taken in obtaining permission to hold them, I think § 4537 as to appeals must be held to apply to the establishment of such private schools, as well as the regular public schools. If, therefore, the directions of this section have been complied with, and the trustee refuses the use of the house for a private school, an appeal may be taken to the county superintendent. If the trustee refuses to obey the decision of the superintendent, he may be compelled to do so by a writ of *mandate.—Holcombe, Supt.*

4. *Public funds.* The public funds can not be used for a private school, 16 Nev. 373; 121 Ill. 297.

5. *Constitutionality.* Is this section constitutional? See § 4510, *note* 3.

6. Of his own motion the trustee can not lease the school-house for the purpose of a private school, 35 Ohio St. 143.

[1859, p. 181. Approved March 3, 1859, and in force August 6, 1859.]

Sec. 4510. Use of school-house. 6. If a majority of the legal voters of any school district desire the use of a school-house of such district for other purposes than common schools, when unoccupied for common school purposes, the trustee shall, upon such application, authorize the director of such school district to permit the people of such district to use the house for any such purpose, giving equal rights and privileges to all religious denominations and political parties, without any regard whatever to the numerical strength of any religious denomination or political party of such district.

1. *Note.* The trustee, upon application of a majority of the legal voters of a school district, may authorize the director to permit the use of the house for other than school purposes, and a complaint to enjoin such use must aver that a majority of the legal voters of the district have not expressed a desire therefor, 48 Ind. 148.

2. *Trustee's power and duty.* The trustee is made responsible for the care, management, and preservation of the school-houses in his school corporation. This trust he can not alienate. It is true that it is his duty to permit the school-house to be used for other then school purposes when the terms of the law have been complied with, but it is equally true that it is contemplated by the law that the trustee shall retain such control of the school-house as will enable him to enforce the provisions of the law. Inasmuch as the trustee must give equal rights and privileges to all religious denominations and political parties, it is clear that he can not make a contract with any party by reason of which one denomination or one political party shall obtain possession of the house to the exclusion of any other, except for the time being, or by which the control of the house shall pass from his hands.

It is not necessary that the voters of a district petition the trustee on each separate occasion that the house is desired for other than school purposes, but if a general petition be filed with the trustee, in proper form, requesting, for example, that the house be used for religious purposes, he may then permit the house to be so used as occasion may require. In the absence of an expressed desire on the part of the voters of a district it is held that the trustee may, through the spirit of accommodation rather than by a strict construction of the law, permit school-houses to be used for religious and other public meetings when he is satisfied that a majority of the district do not object.

In all cases when school-houses are used for such purposes it is the duty of the trustee to prescribe and enforce such rules and regulations as will protect the property from injury. It is evident that the provisions of this section apply only to districts in townships, and not to cities and incorporated towns.—*Smart Supt.*

3. *Decisions.* In Iowa it has been held that the electors of a school district may legally permit the school-house in the district to be used for the purposes of religious worship and Sunday-schools, 35 Ind. 194; and that a statute permitting such use was valid, even though a minority of the tax-payers objected, 50 Ia. 11; 93 Ill. 61, S. C. 34 Am. Rep. 160. But in other States it has been held that the use of a public school building for religious meetings would be enjoined by the courts, 27 Conn. 499; or for Sunday-school, 67 Mo. 301; or for temperance meetings, 21 Wis. 657; or for a private school, 35 Ohio St. 143; or for any private purpose, 15 Kan. 259, S. C. 22 Am. Rep. 268.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4511. School-house, when sold. 149. The proper trustee may, whenever a school-house shall have been removed to a different location, or a new one erected for the school in a different place, if the land whereon the same is situated belongs unconditionally to the township, town, or city, sell the same, when, in his opinion, it is advantageous to the township, town, or city so to do, for the highest price that can be obtained therefor; and upon the payment of the purchase-money to the township, town, or city treasurer, he shall execute to the purchaser a deed of conveyance, which shall be sufficient to vest in such purchaser all the title of such township, town, or city thereto. The money derived from such sale shall be a part of the special school revenue.

Conveyances. A deed to the school township for the use of the township for school purposes is an absolute and not a conditional conveyance, and the township may sell the property so deeded. The deed of the township should be made in the name of the school township, and signed by the trustee thereof as such school trustee. School boards of cities and towns may sell and convey a school lot upon the conditions named in this section, §§ 4437, 4438, 4508, *note* 4.

[1877, p. 125. Approved and in force March 6, 1877.]

Sec. 4512. School-house for several townships. 1. The trustees of two or more adjacent counties or townships may establish a new school district, and build a school-house therein at the joint expense of their several townships, whenever, in their judgment, it shall appear necessary for the better accommodation of the people of their respective townships: *Provided*, That such necessity must be set forth in a petition of the persons making the request—such petition to be presented to each of said trustees. And said trustees shall, at the time agreed upon by them, not less than ten

days nor more than thirty days from the time of receiving such petition hold a joint meeting, for the purpose of declaring whether such petition shall be granted, and take such further action as the case may require.

1. *Adjustment of revenue.* It would seem from the language of the statute that when a joint district school is established, parents and guardians living in the vicinity would have the right to elect to send their children to it, even though it be out of their own township. Such a choice would generally necessitate several transfers, but transfers can not be made except at the time of taking the enumeration (§§ 4473, 4474). The proper way to settle the difficulty would be for the trustees of the several townships to pay to the trustee of the one in which the house is located the revenue then on hand and afterward received for the benefit of the children sent to the school from their several townships, till the next enumeration. The matter will thereafter adjust itself.—*Smart, Supt.*

2. See § 4446, *notes* 1 *to* 3.

Sec. 4513. Cost of erecting. 2. Each township shall bear part of the expense of establishing such joint district school as the number of children of school age residing in each township, and attaching themselves to said new district at the time of the formation, bears to the whole number of children of school age who are attached to said district at its formation; and each township shall assume its share of the debt so incurred. But when said school shall be established, it shall be supported by the township in which it is established, in the manner already prescribed by law.

Title joint. The deed for the property should be in the name of all the corporations interested, but after the building is completed and paid for the partnership ceases, and the school-house passes under the control of the trustee of the township within whose limits the house is situated.—*Smart, Supt.*

[1877, p. 126. Approved and in force March 7, 1877.]

Sec. 4514. Donation and bequests. 1. Whenever any person shall give or bequeath unto trustees any sum of money exceeding five thousand dollars, for the purpose of erecting a public school building or seminary in any unincorporated town in this State, and upon the express or implied condition contained in said bequest that an amount equal thereto shall be raised by the citizens of said town or township for a like purpose, the township trustee of said township in which said town is situated shall, upon the petition of a majority of the legal voters of said township, be authorized to prepare, issue, and sell the bonds of said township, to secure a loan not exceeding fifteen thousand dollars, in anticipation of the revenue for special school purposes, for the purpose of complying with the condition annexed to such gift or devise—said bonds to bear a rate of interest not exceeding seven per cent. per annum, payable at such time, within seven years from date, as such trustee may determine: *Provided*, That until all the bonds of any one issue shall have been redeemed, such township trustee shall not be authorized to make another issue, nor shall any such bonds be sold at a less rate than ninety-five cents on the dollar.

The county board has no power to appropriate money out of the general fund of the county to build a school-house, 55 Ind. 334.

Sec. 4515. Majority of voters. 2. The whole number of votes cast for candidates for congress at the last preceding congressional election in the township shall be deemed to be the whole number of legal voters of such township, a majority of whose names shall be signed to the petition presented to such township trustee; to which petition shall be attached the affidavit or affidavits, as such trustee may deem necessary, of a competent and credible person or persons that the signatures of all the names to said petition are genuine, and that the persons whose names are thereto signed are, as he believes, legal voters of such township.

Sec. 4516. Sale of bonds. 3. The township trustee shall record such petition, together with the names attached, in the record-book of his township, and carefully file away and preserve said petition, and shall enter in such record a statement of the time when such petition was filed; and if said trustee shall then be satisfied that said petition contains the names of a majority of the legal voters of said township, he shall then prepare, issue, and sell bonds to the amount petitioned for in such petition, as provided in section one of this act (§ 4514), and shall accurately keep a record of all proceedings in and about the issue and sale of such bonds, to whom, and for what amount sold, the rate of interest they bear, and the time when they become due.

[1881 S., p. 592. Approved and in force April 16, 1881.]

Sec. 4517. Site for school-house—Eminent domain. 1. Whenever in the opinion of trustees of school corporations or of the township trustee of any township in this State, it shall be considered necessary to purchase any real estate on which to build a school-house, or for any other purpose connected therewith, such township trustee or school trustees, or a majority of them, may file a petition in the circuit court of said county, asking for the appointment of appraisers to appraise and assess the value of said real estate.

Sec. 4518. Appraisers. 2. Upon said petition being filed (the owner or owners of said real estate having had ten days' notice of the pendency thereof), the court shall appoint three freeholders, resident in said school corporation or said township where said real estate is situate, to appraise and assess the value thereof.

Sec. 4519. Appraisement—Payment. 3. Said appraisers, before making said assessment and appraisement, shall take an oath before the clerk of said court to make a fair, true, and honest appraisement of said real estate; and shall then proceed to examine said real estate, hear such evidence as they may consider necessary, and make report of their appraisement within five days after their

appointment. Upon said report being filed, the owner or owners of said real estate may except to the same for any cause, and a trial thereon may be had in said court. When the value of said real estate is finally determined in said court, the township trustees or school trustees may pay to the clerk of said court, for the use of the owner of said real estate, the amount so determined, and, upon payment thereof, the title to said real estate shall vest in said school corporation for said purposes.

Note. The question when and where a school shall be located is left to the discretion of the trustee; and that question can not be tried on condemnation proceedings, 114 Ind. 214.

ARTICLE 8—TEACHERS' INSTITUTES.

SEC.
4520. Township institutes.
4521. County institutes.
4522. Schools closed.
4523. Sessions.

[1889, p. 67. Approved and in force March 2, 1889.]

SEC. 4520. **Township institutes.** 9. At least one Saturday in each month during which the public schools may be in progress shall be devoted to township institutes, or model schools for the improvement of teachers; and two Saturdays may be appropriated, at the discretion of the township trustee of any township. Such institute shall be presided over by a teacher or other person designated by the trustee of the township. The township trustee shall specify, in a written contract with each teacher, that such teacher shall attend the full session of each institute contemplated herein or forfeit one day's wages for every day's absence therefrom, unless such absence shall be occasioned by sickness or such other reason as may be approved of by the township trustee, and for each day's attendance at such institute, each teacher shall receive the same wages as for one day's teaching: *Provided,* That no teacher shall receive such wages unless he or she shall attend the full session of such institute and perform the duty or duties assigned. [El. Sup. § 1279.]

1. *Trustee must notify teachers.* Where a school teacher has no notice when an institute in his township will be held, and he has not been negligent in ascertaining the date thereof, he is not liable to a forfeiture of wages. It is not the duty of the teacher to go to the school trustee and ascertain the time of holding the monthly institute; but it is the duty of the trustee to designate the day on which the same will be held, and notify the teachers of such fact. The teacher has a right to rely upon the trustee doing his duty, and should not suffer through the non-performance of such duty.—*Baldwin, Atty. Gen.*

2. *Teachers must take part.* The object of this institute is the improvement of the teachers of the township. It seems to me that all the powers necessary to carry out this object are by common law conferred upon the persons managing the institute. The object of the institute will utterly fail unless the teachers attending take part in the exercises. I think, therefore, the contract which the trustee makes with the teachers, in relation to township institutes, necessarily requires the teachers to perform such reasonable exercises and duties as may be assigned to them. Indeed, the statute provides that the trustee

may designate one of the teachers to preside over the township institute. I am of the opinion that the mere presence of a teacher at a township institute does not fill the requirements of the law.—*Smart, Supt.*

I think that mere presence at the institute is not a full compliance with the spirit of the law. The law contemplates active participation in the exercises of the institute.—*Bloss, Supt.*

3. *Attendance compulsory.* It is the duty of a township trustee to contract with all teachers employed by him to attend township institutes. It is his duty to provide for holding such institutes, and to see that they are held. A mandate of court may be obtained to compel the trustee to perform both these duties. I think that, even though the trustee had failed to make a written contract with the teachers, he could require them to attend the institutes.—*Holcombe, Supt.*

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4521. County institutes. 159. In order to the encouragement of teachers' institutes, the county auditors of the several counties of this State shall, whenever the county superintendent of such county shall file with said auditor his official statement, showing that there has been held, for five days, a teachers' institute in said county, with an average attendance of twenty-five teachers, or of persons preparing to become such, draw his warrant on the county treasurer, in favor of said county superintendent, for thirty-five dollars; and in case there should be an average attendance of forty teachers, or persons preparing to become such, then the said county auditor shall draw his warrant on the treasurer for fifty dollars, for the purpose of defraying the expenses of said institute: *Provided, however*, That but one of said payments be made in the same year.

Superintendent's duty and pay. Such an institute as is contemplated by the law is not a voluntary association, but a teachers' meeting, at the head of which is the county superintendent. He, therefore, has no right to surrender it into the hands of an incompetent director, nor to permit a course of procedure by any one or by the institute itself by which time shall be wasted or unsatisfactory work done. The teachers are there to be instructed, and the superintendent must necessarily take the responsibility of the institute upon himself. The money which the auditor is authorized to pay is to defray the expenses of the institute exclusive of the *per diem* of the superintendent, whose compensation must be obtained in the usual way. He is also entitled to his *per diem* for reasonable services in making preparations for the institute.—*Smart, Supt.*

Sec. 4522. Schools closed. 160. When any such institute is in session, the common schools of the county in which said institute shall be held shall be closed.

Sec. 4523. Sessions. 161. The several county superintendents are hereby required, as a part of their duty, to hold, or cause to be held, such teachers' institutes at least once in each year in their respective counties.

ARTICLE 9—FREE LIBRARIES.

SEC.
4524. In cities of ten thousand inhabitants.
4525. Tax to maintain.
4526. Real estate.
4526*a*. Real estate for libraries.
4526*b*. Library tax in large cities.
4526*c*. County treasurer's report.
4526*d*. County treasurer's settlements.
4526*e*. Repealing clause.
4526*f*. Bonds to construct library buildings.
4526*g*. Tax to pay bonds—Payment of bonds.
4526*h*. Laws repealed.
4527. Purchase of books for township libraries.
4528. Distribution to townships.
4529. Township trustee in charge.
4530. Trustee's duties.
4531. Use of books.
4532. Where kept.
4533. When open.

[1883, p. 103. Approved March 5, 1883, and in force June 5, 1883.]

SEC. 4524. In cities of ten thousand inhabitants. 1. In all the cities and incorporated towns of this State, the board of school trustees, board of school commissioners, or whatever board may be established by law to take charge of the public or common schools of such city or incorporated town, shall have power if, in their discretion they deem it to the public interest, to establish a free public library in connection with the common schools of such city or incorporated town, and to make such rules and regulations for the care, protection, and government of such library, and for the care of the books provided therefor, and for the taking from and returning to said library of such books as the said board may deem necessary and proper, and to provide penalties for the violation thereof: *Provided*, That in any city or incorporated town where there is already established a library open to all the people, no tax shall be levied for the purpose herein named. [El. Sup. § 1284.]

[1881, p. 47. Approved and in force March 7, 1881.]

SEC. 4525. Tax to maintain. 2. Such board shall also have power to levy a tax of not exceeding one-third of a mill on each dollar of taxable property assessed for taxation in such city in each year; which tax shall be placed on the tax duplicate of such city, and collected in the same manner as other taxes; and when said taxes are so collected, they shall be paid over to the said board for the support and maintenance of said public library. Such board shall have power, and it shall be its duty, to disburse said fund, and all revenues derived from gift or devise, in providing and fitting up suitable rooms for such library; in the purchase, care, and binding of books therefor; and in the payment of salaries to a librarian and necessary assistants.

SEC. 4526. Real estate. 3. Any such city in which a free public library may be established in accordance with the terms of this act may acquire by purchase, or take and hold by gift, grant, or devise, any real estate necessary for, or which may be donated or devised for, the benefit of such library; and all revenues arising therefrom, and the proceeds of the same, if sold, shall be devoted to the use of said library.

[1885 S., p. 160. Approved and in force April 8, 1885.]

Sec. 4526*a*. Real estate for libraries. 1. In any case in which the board of school trustees of any city of this State have purchased any real estate for the use of a public library of said city, under sections 4524, 4525 and 4526 of the Revised Statutes of 1881, and the revenue derived from taxation under said sections may have been or shall be insufficient to pay for such real estate, then said trustees be and they are hereby authorized to pay for the same out of any money in the treasury of such school city belonging to the special school fund thereof. [El. Sup. § 1285.]

Note. The constitutionality of this section is questionable. We have not given the preamble to this statute.

[1891, p. 37. Approved and in force February 26, 1891.]

Sec. 4526*b*. Library tax in large cities. In all cities of the State of Indiana where boards of school commissioners have been elected and are managing the school affairs of said city under an act of the general assembly of the State of Indiana entitled "An act providing for a general system of common schools in all cities of thirty thousand or more inhabitants, and for the election of a board of school commissioners for such cities, and defining their duties and prescribing their powers, and providing for common school libraries within such cities," approved March 3, 1871, and the various acts of the general assembly amendatory thereof and supplemental thereto, and in which the office of city treasurer has been or hereafter may be abolished, under and by virtue of an act of the general assembly of the State of Indiana entitled "An act concerning taxation for city and school purposes in cities containing a population of over seventy thousand, as shown by the last census of the United States; to abolish the offices of city assessor and city treasurer in such cities, and provide for the discharge of the duties of such offices, and repealing laws in conflict therewith," approved February 21, 1885, such boards of school commissioners be and they are hereby authorized and empowered in the manner and form in which they are now by law authorized to levy taxes, to levy taxes for the support of the schools within such city, including such taxes as may be required for paying teachers, in addition to the taxes now authorized to be levied by the general assembly of the State of Indiana, not to exceed, however, in any one year the sum of twenty-five cents on the one hundred dollars of the taxable property, as shown by the certificate showing the assessment and valuation for taxation of all taxable real and personal and railroad property of such city, required to be delivered to said board of school commissioners by section 8 of the said act of the general assembly of the State of Indiana, approved February 21, 1885; and also to levy a tax each year not exceeding four cents on each one hundred dollars of the taxable property in said city as shown by said certificate, for the support of free public libraries in con-

nection with the common schools of said city, and to disburse any and all revenues raised by such tax levied for library purposes in the purchase of books and in the fitting up of suitable rooms for such libraries, salaries to librarians, and other expenses necessarily incident to the maintenance of such library; also, to make and enforce such regulations as they may deem necessary for the taking out and returning to, and for the proper care of all books belonging to such libraries, and to prescribe penalties for the violation of such regulations.

See § 3805*d*.

Sec. 4526*c*. County treasurer's report. 2. In all cities in the State of Indiana where boards of school commissioners have been elected and are managing the school affairs of said city under and by virtue of said act of the general assembly of the State of Indiana, approved March 3, 1871, and in which the office of city treasurer has been or may hereafter be abolished under and by virtue of said act of the general assembly of the State of Indiana, approved February 21, 1885, as mentioned and described in the first section of this act, it shall be the duty of the county treasurer on and after making his settlement with the county auditor on the the third Monday of April, 1891, and the payment to the board of school commissioners of the amount by such settlement found to be due it, as required by section 13 of the last above named act, at the close of each calendar month to make report, duly verified by his oath, to said board of school commissioners of all taxes and delinquent taxes collected within said month, and thereafter upon demand of the treasurer of said board of school commissioners to pay to him for the use of said board of school commissioners the full amount of said taxes and delinquent taxes shown by said reports to have been collected. Upon such payment being made the treasurer of the board of school commissioners shall execute to said county treasurer his receipt for the amount of money so paid, which receipt the latter shall deliver to the secretary of the board of school commissioners, who shall give him a quietus therefor and credit said county treasurer with the amount thereof and charge such amount to the treasurer of said board of school commissioners.

Sec. 4526*d*. County treasurer's settlements. 3. Said county treasurer shall thereafter in his settlement with the county auditor, made as required by law on the third Monday in April and the first Monday of November in each year, present such quietuses to the county auditor, who shall give such county treasurer credit therefor as against the sums with which he is chargeable upon account of the collection of such school taxes.

Sec. 4526*e*. Repealing clause. 4. All laws and parts of laws inconsistent herewith are hereby repealed.

[1891, p. 35. Approved and in force February 26, 1891.]

SEC. 4526*f*. Bonds to construct library buildings. 1. In all cities in the State of Indiana where boards of school commissioners have been elected and are managing the school affairs of said city under an act of the general assembly of the State of Indiana entitled "An act providing for a general system of common schools in all cities of thirty thousand or more inhabitants, and for the election of a board of school commissioners for such cities, and defining their duties and prescribing their powers and providing for common school libraries within such cities," approved March 3, 1871, and the various acts of the general assembly amendatory thereof and supplemental thereto such board of school commissioners be and they are hereby authorized and empowered to issue bonds in any sum not exceeding one hundred thousand dollars, for the purpose of erecting buildings for library and school offices to be used in connection with the common schools of said city. Such bonds to bear interest, not exceeding five per cent. per annum payable after eleven years from the date thereof and within twenty years from the date thereof, as follows, to wit: One-tenth thereof to be paid eleven years from date and one-tenth thereof to be paid each succeeding year until all are paid; the money obtained from the sale of such bonds shall be disbursed by said board of school commissioners in the erection of a building for the library and school offices to be used in connection with the common schools of said city. Such bonds shall be designated "library building bonds," and may be issued in such denominations, and in such sums from time to time as the board of school commissioners may deem expedient; and each of said bonds shall upon its face designate the date of the maturity thereof: *Provided*, That at no time shall the amount of bonds so issued for such purpose by any such board exceed the sum of one hundred thousand dollars; and that said board of school commissioners shall have no power to issue any renewal thereof but the same shall be paid at maturity as hereinafter provided: *And provided further*, That such bonds shall not be sold for less than their par value.

SEC. 4526*g*. Tax to pay bonds—Payment of bonds. 2. If the board of school commissioners in any city shall exercise the power granted to it by this act, it shall provide for the payment of said bonds as follows: At the time of the levying of the taxes for the year which shall be collectible immediately before the maturity of the first maturing of said bonds. Said board of school commissioners shall levy in addition to the levy of taxes they may be authorized to make for other purposes a tax upon all property subject to taxation by it sufficient to pay the first maturing of such bonds, and apply the money raised thereby to the payment thereof; and each year thereafter said board of school commissioners shall levy such tax, and apply the proceeds thereof to the payment of the bonds successively maturing until all shall have been paid.

Sec. 4526*h*. Laws repealed. 3. All laws and parts of laws inconsistent herewith are hereby repealed.

[1865, p. 3. Approved and in force March 6, 1865.]

Sec. 4527. Purchase of books for township libraries. 134. The superintendent of public instruction shall superintend the purchase of books for township libraries, under such regulations as the state board of education may adopt, and report to said board his proceedings in relation thereto; and said board shall order the issuing of the warrants by the auditor of state for the payment of said purchase from said library revenue.

1. *Remark.* The library feature is believed to be one of the best, if not the very best, of the provisions in the school law. We hope the library system may prove so satisfactory, and become so useful and popular, that the people will instruct, by common consent, the next legislature to continue the annual appropriation for library purposes.—*Larrabee, Supt.*

2. *Sections inoperative.* It is to be regretted that the hopes of Supt. Larrabee were not fulfilled. The repeal, by an act of March 9, 1867, of section 131 of the act of March 6, 1865, which provided for a state tax of one-tenth of a mill for the purchase of libraries, renders this and the following section obsolete.

Sec. 4528. Distribution to townships. 135. The state board of education shall, when such libraries have been received, cause the same to be distributed to the several townships in the State, under the direction of the state superintendent, who shall apportion the same according to the school population of the townships: *Provided, however*, That existing inequalities in township libraries shall first be corrected, and that an equal allotment be made to each of the state prisons as is distributed to townships.

Sec. 4529. Township trustee in charge. 136. Such library shall be in charge of the township trustee, shall be deemed the property of the township, and shall not be subject to sale or alienation from any cause whatever.

Sec. 4530. Trustee's duties. 137. Such trustee shall be accountable for the preservation of said library; may prescribe the time of taking and the period of retaining books; assess and recover damages done to them by any person; and adopt regulations necessary for their preservation and usefulness. He shall provide book-cases; also, blank books, ruled, in which to keep an account of books taken out and returned; and report the number each year to the county superintendent. At the commencement of each school term, at each school-house in the township, he shall cause a notice to be posted up, stating where the library is kept, and inviting the free use of the books thereof by the persons of the township.

Sec. 4531. Use of books. 138. Every family in the township shall be entitled to the use of two volumes at a time from said

library, whether any member of such family shall attend school or not.

Sec. 4532. Where kept. 139. The trustee may deposit the library at some central or eligible place in the township, for the convenience of scholars and families, and may appoint, for that purpose, a librarian to have the care and superintendence thereof.

Pay of librarian. When the township trustee employs a township librarian he has authority to make a contract to pay him so much per year. The power to appoint a librarian gives the trustee the power to secure the acceptance of such appointment by paying a sufficient, but reasonable, compensation. There is no statute fixing a fee for such work, but the same is to be paid for out of the township's general fund for ordinary township purposes.—*Baldwin, Atty. Gen.*

Sec. 4533. When open. 140. The library shall be open to all persons entitled to its privileges throughout the year, without regard to school session, Sundays and holidays excepted.

ARTICLE 10—GENERAL PROVISIONS.

SEC.		SEC.	
4534.	Suits, how brought.	4538.	Appeals from county superintendent.
4535.	Costs.	4539.	Oaths.
4536.	Process, how executed.	4540.	Women eligible to school offices.
4537.	Appeals from township trustees.	4541.	Bond binding.

[1863, p. 3. Approved and in force March 6, 1865.]

Sec. 4534. Suits, how brought. 145. Suits brought on behalf of the schools of any township, town, or city shall be brought in the name of the State of Indiana, for the use of such township, town, or city.

Note. An action brought in the name of the State for the use of a city "as a distinct municipal corporation for school purposes" is rightly brought, 66 Ind. 271.

Sec. 4535. Costs. 146. Any person who shall sue for or on account of any decision, act, refusal, or neglect of duty of the township trustee, for which he might have had an appeal, according to the provisions of the preceding section, shall not recover costs.

Note. The "preceding section" here referred to evidently means § 4537. The costs are the costs made in the court.

Sec. 4536. Process, how executed. 144. Process in such suits against a school township, town, or city shall be by summons, executed by leaving a copy thereof with the trustee [or school trustees] of such township, town, or city ten days before the return-day thereof; and in case of an appeal, similar notice of the time of hearing thereof shall be given.

Note. Service of summons by reading to a trustee is insufficient and liable to be set aside, but a judgment by default upon such service would be valid, because it is sufficient notice to sustain a judgment.

Sec. 4537. Appeals from township trustees. 164. Appeals shall be allowed from decisions of the [township] trustees relative to school matters to the county superintendents, who shall receive and promptly determine the same according to the rules which govern appeals from justices of the peace to circuit courts, so far as such rules are applicable; and their decisions of all local questions relating to the legality of school meetings, establishment of schools, and the location, building, repair, or removal of school-houses, or transfers of persons for school purposes, and resignation and dismissal of teachers, shall be final.

1. *Procedure in appeals—Notice to parties.* When a trustee has decided to do an act subject to appeal to the county superintendent, and has made a record of his decision, he should give the people interested such information as they may call for in order to afford them an opportunity to avail themselves of their privilege to appeal if they desire to do so.

Time for appeal—Bond. An appeal must be taken within thirty days. That is the rule as to an appeal from the judgment of a justice of the peace. But any appeal may be granted by the officer to whom it is taken, after the expiration of the thirty days, when the party asking it has been hindered from taking it by circumstances not under his control No bond is necessary in an appeal from a trustee to the county superintendent.

Records—Transcript. When a trustee receives a written notice from an aggrieved party of an appeal from his decision he should immediately make a record of the same. He should make a certified transcript of his record, which should be a complete statement of the proceeding before him, and should file same, with all papers in the case, with the county superintendent, within twenty days.

County superintendent's powers and duties. When the county superintendent receives the documents from the trustee, if the case is such that he can determine the matter upon inspection of the documents, he should render judgment, make proper records, and notify trustee and appellant of his action. If it be necessary to permit the appellant to appear and present his case by testimony and argument, the superintendent should set a day for the trial, not earlier than ten days from the date of notice of appeal, unless all parties signify their readiness to appear earlier; should notify trustee and appellant of the day set, and should issue summons to witnesses at the request of either party. While the superintendent has no power to compel witnesses to attend a trial and testify, it is as much the duty of persons so summoned to obey as it would be if the superintendent had the right to issue a writ of attachment. In case the location of a school-house is involved, the superintendent may view the premises, and seek such evidence as he may deem advisable, and may incorporate the information thus gained into the record as part of the evidence of the case. When a trustee improperly refuses to allow an appeal, the county superintendent may investigate and render judgment.—*Smart, Supt.*

2. *Location of houses.* The county superintendent has no power, on appeal, to require a school-house to be erected on land not belonging to the township. Otherwise his decision is final, but only as to the particular case before him. The trustee may at once relocate at a different place, 44 Ind. 323; 67 *id.* 397. See 114 Ind. 214. After the location has been fixed by the county superintendent on appeal, the township trustee may change it, subject to appeal. But if there be no subsequent change after the county superintendent has determined upon the location, the trustee may be compelled, by mandate, to execute the order, 21 Ind. 317. See also § 4444, *note* 9, and § 4499, *note* 4.

3. *Jurisdiction of courts.* Nothing in this act shall be so construed as to change or abridge the jurisdiction of any court in cases arising under the school laws of the State, and the right of any person to bring suit in any court in any case arising under the school laws shall not be abridged by the provisions of this act, § 4429. No appeal to the superintendent can be taken from the action of a trustee in making a contract with any one, either for building a school-

house or like contracts, nor in regard to any criminal or fraudulent act of a trustee, nor upon a mere breach of a contract, nor upon the dismissal of a teacher in a city or town. This is a question for the courts, 42 Ind. 206.

A suit to set aside a contract for the building of a school-house, and to enjoin the doing of the work, on the ground of fraud on the part of the township trustee in making the contract, is properly brought in the name of the State for the use of the township; for the remedy provided by an appeal to the county examiner is not exclusive in such cases, the matter involved not being "a local question relating to the building of school-houses," 27 Ind. 119. But the remedy of appeal to the superintendent is exclusive when "relative to school matters," and for the purpose of preventing vexatious and expensive litigation it is provided that his decision shall be final in regard to certain enumerated subjects, 26 Ind. 345. Regulations adopted by persons in charge of a school are analogous to by-laws enacted by municipal and other corporations, and both will be annulled by the courts when found to be unauthorized, against common right, or palpably unreasonable, 82 Ind. 278.

Upon any question arising out of the dismissal of a teacher, if the teacher has suffered any damages, he may bring a suit against the township to recover whatever loss he has sustained. The court can only examine whether just cause existed for his dismissal, in order to see if he is entitled to damage for a wrongful dismissal, but can not reinstate him as a teacher, for as to that the superintendent's decision is final. But on all those questions relating to the government and control of schools and school buildings, and school regulations, such as the establishment of schools, and the location, building, repair or removal of school-house, or transfer of persons for school purposes, or even the attachment of a person to a certain school, and resignation of teachers, his decision is final, and no action can be maintained in the courts touching the same. This must necessarily be so, for courts can not undertake the superintendency of school matters. Upon a question of fraud in holding a school meeting it is difficult to see how any question can arise so that courts can exercise any jurisdiction over it; it is believed there is none.—*Baldwin, Atty. Gen.*

4. *References.* See § 4446, *note* 1; 4499, *notes* 4 *to* 6; § 4506.

Sec. 4538. Appeals from county superintendent. 165. Appeals shall be allowed from the decisions of county superintendents to the superintendent of public instruction, on all matters not otherwise provided for in the next preceding section; and the rules that govern appeals from justices of the peace to the circuit courts, as to the time of taking an appeal, giving bonds, etc., shall be applicable in appeals from county superintendents to the superintendent of public instruction.

1. *Procedure.* The same rules in regard to the time allowed for taking an appeal and for making transcript, etc., apply in case of appeals to the state superintendent as to the county superintendent. [See 4537, *note* 1.] But an appeal bond seems to be necessary in case of an appeal to the state superintendent. A bond for $25 would probably be sufficient. The county superintendent should make a transcript of the record, and send it, together with all papers in the case, to the state superintendent, with his certificate indorsed thereon. He must specifically certify to the facts, for example, that A. B. applied for a certificate on a certain day, that upon examination a license was refused on certain grounds, that the enclosed papers are those made by the applicant, upon which he was rejected. A copy of the questions used and the appeal bond should also be sent. In case a refusal to license is based upon the county superintendent's personal knowledge, he should make a statement of the facts, verified by affidavit, and forward it, together with corroborative testimony and the testimony given in favor of the accused. If an appeal is taken in due form the state superintendent may require the county superintendent to forward the papers to him, and upon refusal may visit the county and make an examination into the facts of the case, and render a decision that will be binding on all parties interested.—*Smart, Supt.*

2. *Trial by state superintendent.* The appeal is tried by the superintendent of public instruction upon the papers sent up. Additional affidavits may

be filed with him and witnesses examined. Parties may appear before him and a complete trial be had, the same as before the county superintendent. An applicant for a license, who desires to appeal, should be allowed thirty days from the time the county superintendent's decision is rendered, not from the time of examination. If the license is denied because of immorality, the county superintendent should specify in what particular the immorality consists, and this is the only question that can be tried on appeal. On appeal the superintendent of public instruction can not grant a license; he can only order the county superintendent to grant one. Should the latter refuse to grant it, a mandamus, at the instance of the teacher, would lie to compel him to obey the direction of the state superintendent. If an appeal is taken and the county superintendent refuses to send up the papers, a mandamus will lie to compel him to send them. Or the superintendent of public instruction can visit the county and try the case there. Merely writing a letter to the superintendent of public instruction, by the party desiring to appeal, and stating that he appeals from the decision of the county superintendent, does not constitute an appeal. The initiatory steps must be taken in the matter with the county superintendent.—*Bloss, Supt.*

SEC. 4539. Oaths. 166. School officers are hereby authorized and empowered to administer all oaths relative to school business appertaining to their respective offices.

But school officers can not administer oaths upon any other than school matters, and it is held that directors can not administer them at all. County superintendents and trustees may administer oaths to trustees and teachers reporting to them, and to witnesses in trials before them.

[1881 S., p. 718. Approved April 14, 1881, and in force September 19, 1881.]

SEC. 4540. Women eligible to school offices. 1. Any woman, married or single, of the age of twenty-one years and upwards, and possessing the qualifications prescribed for men, shall be eligible to any office under the general or special school laws of this State.

1. *Constitutionality doubtful.* The passage of this law implies that, in the judgment of the legislature, women are not eligible to such offices. I think that is the correct idea. Indeed, there is serious doubt whether the statute itself is constitutional. If a county superintendent of schools is a county officer, a female, elected as prescribed by § 4424, will find herself confronted by our state constitution (§ 152), which reads: "No person shall be elected or appointed as a county officer who shall not be an elector of the county." The constitutional amendment of March 14, 1881, says, in substance: "In all elections not otherwise provided for by this constitution, every male citizen of the age of twenty-one, who shall have resided in this State six months, etc., etc., shall be entitled to vote in the township where he may reside." (§ 84). Thus it would seem that no one except a male is entitled to hold a county office. My attention is called to the appointment of a lady notary public; but a notary is not a county officer.—*Baldwin, Atty. Gen.*

2. *School trustee—Director.* Attorney-General Baldwin expressed serious doubts of the constitutionality of the act authorizing the election of women to school offices, and held that they were ineligible to the county superintendency on the ground that county officers are required to be electors. This reasoning does not apply to the office of school trustee of a city or town, and until the act is decided by the courts to be unconstitutional there is no ground on which to question the eligibility of women to that office. Women who are voters at school meetings are eligible to the office of director. (§ 4498, *note* 1.) They can not be township school trustees, since that office is held *ex officio* by the civil trustees.—*Holcombe, Supt.*

SEC. 4541. Bond binding. 2. Any woman elected or appointed to any office under the provisions of this act, before she enters upon the discharge of the duties of the office, shall qualify and give bond as required by law and such bond shall be binding upon her and her securities.

CHAPTER LVI.

ELECTIONS.

ART.

1. *General Elections.*
2. *Special Elections.*
3. *Township Elections.*
4. *Recounting.*
5. *Contest.*
5a. *Purity in Elections.*
5b. *Bribery at Elections.*
5c. *Crimes against purity of Elections.*

ARTICLE I—GENERAL ELECTIONS.

SEC.

4678. When held—What offices filled.
4679. Certificate of clerk—Notice of sheriff.
4680. Qualification of electors.
4681. Who disfranchised.
4682. Soldiers, seamen, and marines.
4683. Residence.
4684. Elector's freedom from arrest.
4685. Betting on elections.
4686. Place of voting—Voters in precinct—Boundaries.
4687. Boundaries changed—Notice.
4688. Officers of election.
4689. Inspectors and election board.
4690. Clerk of election.
4691. Forms.
4692. Oaths of members of election board.
4693. Oath, how administered.
4694. Inspector's duty—Administers oaths.
4695. Ballot-boxes.
4696. Inspection of boxes—Keys.
4697. Opening and closing election.
4698. Where to vote.
4698*a*. Registration.
4699. Proclamation.
4700. Sheriff and deputies—Duties.
4700*a*. State board of election commissioners.
4700*b*. County board of elections.
4700*c*. Printing ballots.
4700*d*. Name of candidate, when not printed.
4700*e*. Preservation of certificates and petitions.
4700*f*. Time in which to file certificates.
4700*g*. Governor notifies clerk.
4700*h*. Publication of nominations.
4700*i*. Governor and clerk's duties.
4700*j*. Constitutional amendments.
4701. Ballots.
4701*a*. Vacancy on ticket, how filled.
4701*b*. Printer of ballots.
4701*c*. Distributing ballots.
4701*d*. Pay of clerk—Messenger.
4701*e*. Delivering ballots to wrong person.
4701*f*. Felony to take away ballots.
4701*g*. Inspector not able to attend.
4701*h*. Poll clerks and duties.
4701*i*. Cards—Instructions.
4701*j*. Special messenger with ballots.
4701*k*. Inspector's neglect of duty.
4701*l*. Loss of ballots.
4701*m*. Preservation and burning of ballots.
4701*n*. Election rooms and booths.
4702. Challenges—Affidavits.
4703. Arrest of illegal voter.
4703*a*. Perjury.
4703*b*. Employment of voter.
4704. Method of voting.
4705. Number of voters in election room.
4705*a*. Number of voters in booth at once—Mutilated ballots.
4705*b*. Poll clerks, when can prepare ballots.
4705*c*. Deposit of ballots by inspector.
4705*d*. Removal of stamps.
4705*e*. Counting ballots.
4706. Defective ballots.
4707. Duty of board.
4708. Adjournments forbidden.
4709. Meals for election officers.
4709*a*. Canvass of votes.
4710. Counting ballots.
4710*a*. Destruction of election papers.
4710*b*. Opening or destroying ballots.
4710*c*. Unlawfully entering election room.
4710*d*. Instructing elector how to mark his ballot.
4710*e*. Revealing how elector voted.
4710*f*. Inducing member of election board to violate preceding section.
4710*g*. Removing or destroying cards, etc.
4710*h*.[1] Electioneering.
4710*i*. Officer neglecting duty.
4710*j*. Constitutional amendments.
4710*k*. Disposition of affidavits.
4710*l*. County and township elections.
4710*m*. City and town election.
4710*n*. Legal holidays.
4710*o*. Laws repealed—Saving clause.
4711. Witnesses to count—Misdemeanor.
4712. Certificate of judges.
4713. Care of ballots and papers.
4714. Clerk's and trustee's duty.
4715. Board of canvassers.
4716. Officers of board.
4717. Duties of board.
4718. Certificate.
4719. Tie vote.
4720. Defective papers—Duty of board.
4721. Certificate of election.
4722. Defective returns—Commissions.
4723. Certificates of votes for legislators.
4724. Certificate of election.
4725. Tie vote for legislators.
4726. Certificate to secretary of state.
4727. Duty of secretary of state.
4728. Secretary of state and governor, as to congressmen.
4729. Clerk's duty as to election of governor.
4730. Pay of officers.

[1881 S., p. 482. Approved April 21, 1881, and in force September 19, 1881.]

SEC. 4678. When held—What offices filled. 1. A general election shall be held on the first Tuesday after the first Monday in November in the year one thousand eight hundred and eighty-two, and biennally thereafter on the same day, at which election all existing vacancies in office, and all offices, the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law.

1. This section has no bearing on town or city elections. The time of holding a city election is specified in §§ 3043 and 3052, 3053; and town elections in § 3305. The decisions cited in these notes are applicable to them by analogy.

2. The supreme court takes judicial notice of the number of votes cast at a general state election upon all questions of public affairs affecting the State, 60 Ind. 505.

3. A vacancy in an office that does not occur sufficiently long enough before the day of election to enable the giving of the proper notice can not be filled at such election; and ballots cast therefor are void, 17 Ind. 554; 18 Ind. 346. *Quare*, if nominations are duly made and the names put upon the ballots under the present system, would not the election be valid?

4. An officer may be elected if there is a vacancy; so where an appointee is filling an office, and where the term for which an incumbent was elected will expire before another election, 10 Ind. 62.

5. To constitute a valid and operative *resignation* there must be an intention to relinquish a portion of the term of the office, accompanied by the act of relinquishment. A prospective resignation may be withdrawn at any time before it is accepted; and after it is accepted it may be withdrawn by the consent of the authority accepting, where no new rights have intervened. Such a resignation creates no necessity for an election, 10 Ind. 62. But it has been decided that a resignation may be made to take effect in the future, and before an actual vacancy has been thereby created it may be filled, 78 Ind. 570. Where a vacancy was filled without notice of the withdrawal of the resignation it was held that the appointee was entitled to the office, 103 Ind. 444.

6. Where the voters at an election know, or are legally bound to know, that a candidate is *ineligible*, the election does not necessarily result in a failure; for his opponent, if he have one who is eligible and if he receive any votes, although a minority of those cast, is elected, 12 Ind. 569; 14 Ind. 93; 15 Ind. 327; 35 Ind. 111; 81 Ind. 558; 100 Ind. 489; 41 Ind. 572; 107 Ind. 374; 126 Ind. 51. This rule applies only where different persons are candidates for the same office, 41 Ind. 572.

7. The supreme court, and all courts in fact, takes *judicial notice* of the time of holding general elections, 73 Ind. 175; 83 Ind. 542. The courts take judicial notice, also, of the accession of the governor of the State, 12 Ind. 330.

8. Vacancy in office of *lieutenant-governor*, when may be filled, and contest over, 109 Ind. 79.

9. A person elected to fill an office in which the term of the present incumbent has expired, but where he is holding over under the provisions of the constitution, § 225, is entitled to the office as soon as he qualifies, 110 Ind. 122.

10. An election held at any other day than that fixed by law is void, 40 Ind. 469.

11. Election laws are *liberally construed* when necessary to reach a correct result, and their provisions treated as *directory* rather than as mandatory, 109 Ind. 26; 69 Ind. 218. See § 4757, and *notes*.

12. The *legislature* can neither *elect* nor *appoint* to an office which is in no manner connected with the discharge of legislative duties. The power to create an office, conferred upon the legislature by the constitution does not give it the power to fill an office by appointment after created, 118 Ind. 382, 426, 449. The legislature can not create a *supreme court commissioner*, 118 Ind. 350.

But it may appoint *trustees* for the benevolent institutions of the State, 119 Ind. 386, 395. It can not fill the office of *state geologist*, 121 Ind. 20; 122 Ind. 17; nor chief of the *bureau of statistics*, 121 Ind. 495; nor *mine inspector*, which latter the governor may fill, 121 Ind. 20; 122 Ind. 17; but it may authorize the state geologist to appoint an oil inspector, 27 N. E. Rep. 186.

Sec. 4679. Certificate of clerk—Notice of sheriff. 2. The clerk of the circuit court shall, at least twenty days before such election, certify to the sheriff of his county what officers are to be elected; and such sheriff shall give fifteen days' notice thereof, by posting up, at all usual places of holding such elections, a copy of such certificate, and by one publication thereof in some newspaper of his county, if any there be, and by delivering a copy thereof to the township trustee of each township within the county. But no election shall be invalidated by the failure of such clerk or sheriff in the performance of any of the duties enjoined by this section.

1. This section does not apply to cities and towns; but the decisions, cited in the notes, by analogy, do apply. Notice in city, see § 3037; in town, § 3304.

2. Neither the sheriff nor clerk of the county can bind the county in the *purchase* of election *blanks*, for posting and giving notices under this section, 93 Ind. 307.

3. *Failure* to give *notice* does not render a general election void; for the electors are bound to take notice when the general election will be held, and of the offices that will fall vacant before the next general election, 15 Ind. 327; 14 Ind. 93; 19 Ind. 356; 69 Ind. 218. In case of resignation, see § 4678, *note* 2.

4. A *vacancy* that does not occur sufficiently long enough before the day of election to enable the giving of the proper notice can not be filled at such election; and ballots cast therefor are void, 17 Ind. 554; 18 Ind. 346. See § 4678, *note* 2.

Quare, if nominations are duly made by all the political parties and the names of the nominees put upon the official ballots under the present system, would the election be void, under the facts just given?

5. A statute was passed with an emergency clause January 15, 1849, authorizing an election on the first of next March, directing the sheriff to give notice forthwith, and authorizing the county commissioners to subscribe to stock to a railroad company if the election resulted favorably to such subscription. Notice was not given until February 15 and 22. While there was no decision on the point thus raised, the judge who wrote the opinion individually believed the election was void, 9 Ind. 310. See 69 Ind. 218.

6. The sheriff's certificate of posting up notices of an election is *prima facie* evidence of the fact, 39 Ind. 598. *Proof of posting up* notices may be made by the sheriff's return, even though it is unaccompanied by a copy of the notice, 69 Ind. 324.

Sec. 4680. Qualifications of electors. 3. All elections shall be free and equal; and in all elections every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in this State during the six months, in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election; and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this State during the six months, in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, and shall

have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization,—shall be entitled to vote in the township or precinct where he may reside.

1. This section, and the provision of the constitution, § 84, applies to cities and towns.

2. A person is an *inhabitant* of that place which is the principal seat of his residence, business pursuits, connections, attachments, and political and municipal relations. It embraces the fact of residence at a place with the intent to regard and make it his home. The act and *intent* must concur; and the intent may be inferred from declarations and conduct, 52 Ind. 361.

3. It is a fixed rule that a *purpose to change*, unaccompanied by actual removal or change of residence, does not constitute a change of domicile. The fact and intent must concur, 52 Ind. 361; 32 Ind. 111.

4. A voter will not lose his residence in Indiana by a *mere intention* to leave the State, unaccompanied by a removal, 32 Ind. 111.

5. Two things must concur to effectuate a change of domicile—first, an *actual change* or removal of residence; and, second, *an intention* to make such change or removal permanent. If both these requisites concur in point of time, the place to which such removal is made becomes, instantly, the place of domicile, notwithstanding the party may entertain a floating intention to return at some future period.—Story on Conflict of Laws, sections 46, 43.

6. A *student*, who goes to a college town with the intention of remaining simply as a student, and who does not change his intention, does not acquire a residence that entitles him to vote there; but where the intention is formed at any time to make such town his domicile, in good faith, and to the exclusion of all other places, he becomes a citizen, and, being otherwise qualified, is entitled to vote there, although he intends to remain only during a limited period, 113 Ind. 148; 7 Mass. 1; 71 Pa. St. 302, S. C. 10 Am. R. 698, 78 Ill. 170; 53 Ia. 246, 76 Me. 158, S. C. 49 Am. R. 606; 10 Mass. 488. McCrary on Elections, §§ 38, 39, 41. Cooley, Const. Lim. 754.

7. For *rules upon domicile* recognized in Indiana, see note to French *vs.* Lighty, 9 Ind. 477; for the leading English case, see Summerville *vs.* Lord Summerville, 5 Ves., Jr., 750; and for American cases, see Guier *vs.* O'Daniel, 1 Am. L. Cases, 725; State *vs.* Hallet, 8 Ala. 159; Ringold *vs.* Barley, 5 Md. 186; Smith *vs.* Croom, 7 Fla. 81; McKowen *vs.* McGuire, 15 La. 637; Leach *vs.* Pillsbury, 15 N. H. 137; Johnson *vs.* 21 Bales, etc., 2 Paine, 602; Jennison *vs.* Hapgood, 10 Pick. 98; Williams *vs.* Whitney, 11 Mass. 423.

8. The residence of the governor, secretary, auditor, treasurer, and attorney-general of the State is at Indianapolis, R. S. 1881, § 155, and Acts 1889, p. 125, § 6; El. Sup. § 1802.

Sec. 4681. Who disfranchised. 4. Every person undergoing a sentence of imprisonment on conviction for any felony or misdemeanor shall be disfranchised during the period of such imprisonment.

This section applies to cities and towns. See § 89.

Sec. 4682. Soldiers, seamen, and marines. 5. No soldier, seaman, or marine, in the army or navy of the United States or of their allies, shall be deemed to have acquired a residence in the State in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine have the right to vote.

This section applies to cities and towns. See § 85.

Sec. 4683. Residence. 6. No person shall be deemed to have lost his residence in the State by reason of his absence either on business of this State or of the United States.

This section applies to cities and towns. See § 86.

Sec. 4684. Elector's freedom from arrest. 7. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

This section applies to cities and towns. See § 93. Arrest on civil process can not be made; and if made, the person arrested will be discharged on motion, 6 B. 540; or released by a writ of habeas corpus. 6 B. 278. A general direction to arrest a defendant, on a capias given by the plaintiff to an officer, does not render such plaintiff liable if the officer arrests the defendant when he is, at the time, exempt from arrest, 1 Ind. 293.

[1857, p. 35. In force August 24, 1857.]

Sec. 4685. Betting on elections. 1. Any person who shall bet or wager any money or other valuable property on the result of any election in this or any other State shall, upon conviction thereof, forfeit and pay to the State of Indiana, for the benefit of the common school fund, any sum not less than the amount so bet or wagered nor more than twice said amount.

1. This section applies to cities and towns.

2. Under this section the offense is committed by the mere betting alone, 58 Ind. 8. Under the laws of this State, betting upon the result of any election is gaming, 58 Ind. 8; (overruling 47 Ind. 127); 12 Ind. 330.

3. Money or property paid or delivered on the result of an election can not be *recovered back*, 63 Ind. 213. Nor can there be an action maintained to recover money on the value of an article bet or wagered, 63 Ind. 213.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4686. Place of voting—Voters in precinct—Boundaries. 1. The county commissioners of each county in this State shall, at their first session after the taking effect of this act, divide the townships of their respective counties into election precincts, and establish the boundaries of the same. Such board of commissioners shall designate at least one place of holding elections in each township, and every township in which only one place of holding elections is designated shall constitute a precinct. There shall be but one voting place in a precinct. Each precinct shall contain, as nearly as practicable, two hundred electors, based on the number of votes cast at the last election for presidential electors; but no precinct shall contain more than two hundred and fifty electors. If at any election hereafter two hundred and fifty or more votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report the same to the board of county commissioners, who shall, at their next regular meeting, divide such precinct as equally as possible so that the new precincts formed thereof shall each contain two hundred electors, as nearly as practicable; but no precinct shall contain more than two hun-

dred and fifty electors, and shall report such division to the clerk of the circuit court of such county, and to the governor of the State, together with the estimated number of votes in each of the new precincts. If such board shall fail to act as herein directed, any qualified voter of the county may apply for a writ of mandamus to compel a performance of this duty. [El. Sup. § 1323.]

1. This section supersedes the corresponding old sections of the act of 1881.

2. This section applies to cities and towns. The precincts of the city or town, established by the council or board of trustees, should correspond with those established by the county commissioners, or *vice versa*, as near as possible, so as to avoid confusion. But there is no legal compulsion to make the one adopt the arrangement of the other. The common council of the cities and board of trustees of towns correspond with the boards of county commissioners, and possess all their powers with respect to city and town elections. If not already done, the common council or board of trustees may at once, and should, proceed to divide the city or town into precincts, and give the proper notice. Once made, the precincts can not be changed, except under the conditions specified in this and the following sections.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4687. Boundaries changed—Notice. 2. The board of commissioners of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change any place of holding elections, whenever public convenience or the public good may require it: *Provided*, That no such change, division or consolidation shall be made after the June term of such commissioners' court next preceding an election: *And provided, further*, That no such change, division or consolidation shall be valid without giving due notice, at least one month before any election, by one publication in two newspapers published in said county, representing the two political parties which cast the highest number of votes in the State at the last general election, and by posters put up in four of the most public places in each precinct: *And provided, further*, That no precinct shall be enlarged so as to contain more than two hundred and fifty electors.

1. This section supersedes the corresponding section of the act of 1881. It is applicable to cities and towns.

2. No change can be made, probably, after the last meeting in June of the common council or board of trustees; but this is a very doubtful statement.

3. The clause prohibiting a change after the June term of the board next preceding any election does not apply where the re-adjustment of a precinct becomes necessary on account of a change in the boundary line between townships. Thus where the boundary line was changed in December next preceding the April election, by the addition of territory taken from an adjoining township, it was held that the persons residing upon such territory, being otherwise legal voters, were entitled to vote at such election in the precinct into which they had been cast, 109 Ind. 26. See § 4757, *note* 5. This is also true where a city or town extends or contracts its corporate limits.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4688. Officers of election. 3. Township trustees shall, by virtue of their office, be inspectors of elections in the precincts in

which they respectively reside, and shall, prior to the opening of the polls in such precinct, appoint as judges of election two qualified electors of such precinct, who shall have been freeholders and resident householders therein for at least one year, or householders for at least two years next preceding such election, and who are members of different political parties and of the parties which cast the highest number of votes in the State at the preceding general election: *Provided*, That if at least one week or more prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the State at the last general election shall designate a member of such party as judge, having the same qualifications as above prescribed, he shall be appointed, and such judges, together with the inspector, shall constitute a board of election. No person shall be eligible as a member of the board of election who has anything of value bet or wagered on the result of such election, or who is a candidate to be voted for at such election, or who is father, father-in-law, son, son-in-law, grandfather, grandson, brother, brother-in-law, uncle, nephew, first or second cousin of any candidate at such election. If at any time before, or during an election, it shall be made to appear to any inspector by the affidavit of two or more qualified electors of the precinct, that either of the judges is disqualified under the provisions of this act, he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed; and in case such disqualified judge shall have taken the oath of office hereinafter prescribed, the inspector shall place such oath and affidavit before the next grand jury of the county. [El. Sup. § 1325.]

1. This section supersedes the corresponding section of the act of 1881. It is applicable to cities and towns.

2. The council or board of trustees must appoint one inspector and two judges in each precinct of the city or town. The city or town central committee of either of the two parties that cast the largest number of votes in the State (not in the city or town) at the last general election may designate a member of such party as judge.

3. This section is *not void* on the ground that it requires the judges of election to be selected from two opposing political parties having the highest number of electors. Such judges are not officers within the meaning of the constitution, which prohibits the granting to any class of citizens privileges not granted to others, 118 Ind. p. 479.

4. In an action by an officer in his official capacity the defendant can not defeat the action by showing that the election officers were disqualified to act, 29 Ind. 118.

Sec. 4689. Inspectors and election board. 4. Whenever any board of county commissioners shall designate more than one precinct in any township it shall at the June term of said board, next preceding any election, appoint in each precinct in which no township trustee resides, as inspector of such election, some qualified voter of such precinct, who shall have been a freeholder and resident householder in such precinct for at least one year, or a

resident householder for at least two years next preceding such election. Such board of county commissioners shall hold a special session one week before each election, and shall fill all vacancies that may have occurred in the office of inspector, and shall fill any vacancy occurring thereafter at any regular or called session of the board previous to the election. Such appointed inspector shall, before the time of opening the election in his precinct, appoint two election judges, if the same have not already been appointed, as hereinbefore provided, in the same manner and under the same requirements as provided for township trustees acting as inspectors; and such judges and inspectors shall constitute the board of election for such precinct. If any member of an election board shall fail to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a member of his political party to serve in his stead: *Provided*, That, if the qualified electors of his party present at the polls shall nominate a qualified person for such vacancy, such nominee shall be appointed. If none of the members of an election board shall appear at the hour appointed for opening the polls, the qualified electors present shall elect a board *viva voce*, as nearly as possible in conformity with the provisions hereof. [El. Sup. § 1326.]

This section supersedes the old section of the act of 1881. It is applicable to cities and towns.

Sec. 4690. Clerk of elections. 5. Such board of election shall appoint as poll clerks two qualified electors of such precinct, one from each of the two parties that cast the largest vote in the State at the last general election: *Provided*, That if, four days or more prior to such election, the chairman of the county central committee of either of the two parties that cast the largest number of votes in the State at the last general election shall designate a member of such party as poll clerk, such nominee shall be appointed. [El. Sup. § 1327.]

This section supersedes the old section of the act of 1881. It is applicable to cities and towns.

Sec. 4691. Forms. 6. The auditor of each county in the State shall make out and cause to be delivered to the inspectors of the several precincts in their respective counties, at least ten days previous to any election, a suitable number of blank forms of poll books, containing one column headed "Names of voters," and an additional column headed "Number of voters," [votes] and also forms of election returns, with the proper captions, forms of oaths, and forms of certificates and tally papers necessary to be used in all elections hereafter held in this State. [El. Sup. § 1328.]

This section supersedes the old section of the act of 1881. The city or town clerk prepares the city or town forms.

Sec. 4692. Oaths of members of election board. 7. Before any election shall be opened, the inspector and judges shall each make oath to support the constitution of the United States and of this State; to faithfully and impartially discharge the duties assigned by law; that they will not knowingly permit any person to vote who is not qualified, and not knowingly refuse the qualified vote of any elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualification of such person as an elector; that they will not disclose or communicate to any person how any elector voted or how any ballot was folded, marked or stamped; and that they are now and for one year next preceding have continued to be *bona fide* residents and freeholders, or *bona fide* householders, for at least two years, of the township in which such precinct is situated; and that they have nothing of value bet or wagered upon the result of said election, and are not candidates at said election, and that they are not related to any person to be voted for at said election within the degrees named in section three of this act; which oath shall be in writing or printed, and shall be subscribed and executed before some person authorized by law to administer oaths, which officer shall attach thereto his jurat; and such oath shall then be attached to the poll book, and with it return [returned] to the clerk's office of his county, as hereinafter provided.

Which oath shall be in the following form:

STATE OF INDIANA, }
. . . . . COUNTY. } ss.

I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and of this State; that I will faithfully and impartially discharge the duties as inspector or judge of election assigned by law; that I will not knowingly permit any person to vote who is not qualified, and will not knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote further than is necessary to procure satisfactory information of the qualification of such person as an elector; that I am now and have been continuously for one year next preceding this date a *bona fide* resident freeholder (or a *bona fide* resident householder for at least two years next preceding this date) of the township in which the precinct in which I am to act as a member of the election board is situated; and that I will not disclose or communicate to any person how any elector has voted at such election, or how any ballot has been folded, marked or stamped; that I have nothing of value bet or wagered upon the result of said election, and am not a candidate at this election, and am not related to any person to be voted for at this election within the degrees named in section three of the election law.

Subscribed and sworn to before me this . . day of . . . . . .

. . . . . .

[El. Sup. § 1329]

1. This section supersedes the old section of the act of 1881. It is applicable to cities and towns.

2. A failure by the election officers to take the oath is not sufficient to avoid the election, 1 El. Cas. (Ont.) 291.

Sec. 4693. Oath, how administered. 8. If no person present be authorized by law to administer the oath of office, the inspector shall administer the same to the judges, and one of such judges shall then administer said oath to the inspector. [El. Sup. § 1330.]

This section is exactly like the old section in the act of 1881; supersedes it, and is applicable to cities and towns.

Sec. 4694. Inspector's duty—Administers oaths. 9. The inspector shall be chairman of such board, and, before the reception of any votes, shall administer an oath to the clerks of the election that they will faithfully discharge their duties as such. After the organization of the board of elections the inspector may administer all necessary oaths which may be required in the discharge of its duties, and all oaths shall be written or printed, and shall be signed by the persons making such oaths in the presence of such board of elections, and the person administering such oaths shall affix his jurat thereto, and said affidavit shall be attached to and returned with the poll lists to the office of the county clerk. The oaths herein prescribed for the clerk of elections shall be in the following form, namely:

STATE OF INDIANA, }
. . . . . COUNTY, } ss:

I do solemnly swear (or affirm as the case may be) that I will faithfully and honestly discharge my duties as clerk of the election in . . . precinct and . . . ward (. . . or . . . township) in . . . county, Indiana, and that I will not disclose or communicate to any person how any elector voted, or how any ballot was folded, marked or stamped.

. . . . . .

Subscribed and sworn to before me this . . . day of . . .

. . . . . .

[El. Sup. § 1331.]

This section supersedes the section in the act of 1881; and it is applicable to cities and towns.

Sec. 4695. Ballot-boxes. 10. The board of county commissioners of each county shall provide, at the expense of the county, two ballot boxes, one painted red, for the reception of the ballots prepared by the state board of election commissioners, and one painted white, for the reception of the ballots prepared by the county board of election commissioners for each precinct; each ballot-box shall have at least two locks of different kinds and combinations, so that the key of one will not unlock the other, and be otherwise so constructed as to contribute toward the prevention of fraud. [El. Sup. § 1332.]

This section is applicable to cities and towns; and supersedes the corresponding section in the act of 1881. The common council and board of town trustees provide the ballot boxes for the city and town.

Sec. 4696. Inspection of boxes—Keys. 11. An opening shall be made in the lid of each box sufficient only for a single ballot; and, at the time the election is opened, the inspector and judges shall see that there are no ballots in the box before the voting begins, and shall thereupon securely lock the box, and give one key to one of the judges who is in politics opposed to the inspector, the inspector retaining the other key; and the same shall not be again opened until the polls are closed, and the board is ready to immediately proceed with the counting. [El. Sup. § 1333.]

This section supersedes the corresponding section in the act of 1881; and is applicable to cities and towns.

Sec. 4697. Opening and closing election. 12. The election shall be opened in the forenoon at the hour of eight o'clock and continue open until four o'clock in the afternoon, after which the board may close the election at any time, when all the electors have voted, or when fifteen minutes have passed without a vote having been tendered; but the polls shall, in no case, be kept open after six o'clock of the afternoon; and the polls shall not be closed after four o'clock and before six o'clock except by the unanimous consent of all the members of the election board; but whenever the polls are closed, proclamation must be made of the fact of such closing by the inspector, to the people outside, in a loud and audible tone of voice, and a minute of such proclamation, and of the time when the same was made, must be entered on the tally papers by the clerks, and after such minute has been made, no more votes shall be received: *Provided*, That upon the petition of twenty legal voters and householders of any precinct in the State, presented to the board of county commissioners at their June session next preceding any election in the county in which such precinct or precincts are situate, petitioning said board for the opening of the election at the hour of six o'clock in the forenoon, it is made the duty of the board of commissioners to grant and enter of record the prayer of such precinct petitioners; and it is made the further duty of the board to direct the auditor of the county to publish in two newspapers of general circulation published in said county, representing the leading national political parties opposed to each other, for three successive weeks, a notice setting out fully the name of the precinct or precincts, and the township, town or city in which such precinct or precincts are situated, so petitioning for the opening of the polls at six o'clock in the forenoon, and the board shall enter of record an order requiring the polls of every such precinct to be opened accordingly: *Provided, further*, That in all cities and in incorporated towns having a population of one thousand or more, as shown by the last United States census, the

polls shall be opened at six o'clock in the forenoon on the day of such election and closed at six o'clock in the afternoon of said day. [El. Sup. § 1334.]

1. This section supersedes the corresponding section in the act of 1881. It is applicable to cities and towns. The petition, in the case of a city or town, is directed to the common council or board of trustees; and the clerk of the city or town gives the notice required by this section.

2. Section 13 of the act of 1889 [El. Sup. § 1335] concerning the registration of certain persons was declared to be unconstitutional by the supreme court, 125 Ind. 281. See § 4698*a*.

3. Handing a ballot to a voter a few minutes before 6 or 8 a. m., which is cast after either hour, does not render the ballot void, 4 Australian Jur. R. 166.

4. Statute as to time of closing is directory, and departure from its provisions will not invalidate an election, 19 O. S. 25. Closing for an hour at noon, in the absence of fraud, will not invalidate election, *Ibid;* see Am. L. Reg. 88.

[1881, p. 482. Approved April 21, 1881, and in force September 19, 1881.]

Sec. 4698. Where to vote. 21. Each elector shall vote by ballot, in the precinct wherein he resides.

[1891, p. 350. Approved March 9, 1891, and in force June 3, 1891.]

Sec. 4698*a*. Registration. 1. Each elector shall vote by ballot in the precinct wherein he resides. Any person who having been a resident of Indiana, and a qualified voter therein at any general election, shall have absented himself from the State for a period of six months or more since last so voting, or who shall have gone into any other State or sovereignty with the intention of voting therein since last so voting, or during any absence in another State or sovereignty, shall have voted therein, since last so voting, and also any person who shall not have been a *bona fide* resident of the county in which he resides at least six months before any election, shall before being entitled to vote at such election in this State register in the office of the clerk of the circuit court of the county in which he resides, a notice that he claims to be a legal voter in such county. Such registration shall be made at least fifty-nine days prior to any such election and the notice shall state such person's name, age, and place of residence (by which shall be understood his lodging place) both at the time of registration, and during the period of four months prior thereto. The notice shall be the form following, and shall be sworn to before such clerk.

STATE OF INDIANA, }
. . . . . COUNTY. } ss.

I, . . . , the subscriber hereto, hereby declare that I am a qualified elector under the laws of Indiana, entitled to vote at the election to be held on the . . . day of . . . ; that I was . . . years of age on my last birthday; that my lodging place is now (here insert exact location); that four months prior to this date my lodging place was (here insert exact location); that after leaving said location I removed to (here insert exact location), and I am now a *bona fide* resident of the precinct in which I lodge: *Pro-*

vided, That the provisions of this section respecting such registration and notice shall not apply to any voter who, six months or more previous to any election, shall have registered with said clerk a notice declaring his intention to hold his residence in this State during a contemplated absence. And that during such absence he will not exercise the right of suffrage elsewhere, and which notice shall be as follows, and shall be sworn to before said clerk.

STATE OF INDIANA, }
. . . . . COUNTY. } SS.

I, . . . , the subscriber hereto, a qualified voter of (here insert the name, his precinct, ward, township, town, or city), in said county, intending to absent myself, do hereby declare my intention to hold my residence as a voter in said State, and that I will not exercise the right of suffrage elsewhere during my absence.

On the filing of any notice, as provided for in this section, it shall be the duty of such clerk to enter the name and residence of said elector and date of the filing of said notice in a book furnished for said purpose, to be open at all times to the inspection of the public, and safely preserve said original notice, and deliver a certified copy of the same to the elector so registering, and on demand of any challenger or member of the election board such elector shall be required to produce the same before being allowed to vote. No person shall register for any other person or in the name of any other person or present the copy of the register for any other person at a polling place, or induce, hire or advise any other person not to register who may be required to register as above. Any person violating the provisions of this section, or who shall vote or attempt to vote without having been registered when required to do so as above, shall be guilty of a felony, and upon conviction, shall be imprisoned in the state prison for not less than one or more than five years and be disfranchised for any determinate period. No elector shall be at any cost or charge for such registration or certificate thereof, and the clerk shall be allowed twenty-five cents and no more for each registration and certificate thereof, to be in full for all services connected therewith, which allowance shall be made out of the county treasury by the board of county commissioners on itemized statements sworn to by said clerk.

This section seeks to avoid the objections raised to section 13 of the act of 1889 (Acts 1889, p. 163; El. Sup. § 1335), but a careful reading of the opinions delivered in the case holding that section void shows that such objections are not met by the provisions of this section. The entire section is clearly void, 125 Ind. 281.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

SEC. 4699. Proclamation. 14. Before receiving the ballot of any elector, the board of election shall cause to be proclaimed that such election is opened. [El. Sup. § 1336.]

This section supersedes the corresponding section of the act of 1881, and applies to cities and towns.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4700. Sheriff and deputies—Duties. 15. It shall be the duty of the sheriff of each county to appoint, five days prior to each election, two special deputies for each precinct in the county, to be known as election sheriffs, who shall attend the polling places in their respective precincts, from the opening of the polls to the conclusion of the count. It shall be their duty to preserve order at the polls and enforce the provisions of the election law under the direction of the election board, and make arrests on the demand of a member of the board, or on affidavit, as hereinafter provided. One of such election sheriffs shall be chosen from each of the two parties that cast the largest number of votes in the State at the last general election; and if at least five days prior to such election, the chairman of the county central committee of either of such parties, shall nominate a member of his party for election sheriff in any precinct, such nominee shall be appointed. If any election sheriff shall fail to appear at the opening of the polls, the member or members of the election board of his political party shall appoint a person to act in his place. Compensation of one dollar and fifty cents per day shall be allowed to each election sheriff by the board of county commissioners, but no such election sheriff shall be allowed for more days' service than members of the election board in the same precinct are allowed. No other peace officers of the State, or any division thereof, shall be allowed within fifty feet of the polls, except to serve process of courts or to vote, unless summoned by the election sheriffs. No person other than the election officers shall remain within fifty feet of the polls, except when voting: *Provided*, That each political party may appoint one challenger and one poll-book holder for each precinct, who shall be entitled to stand at the sides of the chute next to the challenge window. Such challenger and poll-book holder shall be appointed in writing by the chairman of the county or other local committee of their political party, and shall produce written appointments on demand of a member of the election board. It shall be lawful for a political party to pay such challenger and poll-book holder not more than three dollars for services at any election, but not more than one person of any one party shall be paid for services in either such capacity in any precinct, and no challenger or poll-book holder shall receive any compensation for such services, except from the political party he represents.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4700*a*. State board of election commissioners. 16. The governor of the State, and two qualified electors by him appointed, one from each of the two political parties that cast the largest number of votes in the State at the last preceding general election, shall constitute a state board of election commissioners. Such appointments shall be made at least thirty days prior to each

general election, and if, prior to that time, the chairman of the state central committee of either of such parties shall nominate in writing, a member of his own party for such appointment, the governor of the state shall appoint such nominee. In case of death or disability of either appointee, the governor of the State shall notify the chairman of the said central committee of such appointee's political party, and such chairman may, within three days thereafter, recommend a successor, who shall thereupon be appointed: *Provided*, That if such chairman shall fail to make recommendations of appointment within the time specified, the governor of the State shall make such appointment of his own selection from such political party. It shall be the duty of said board to prepare and distribute ballots and stamps for election of all officers for whom all the electors of the State are entitled to vote, in compliance with the provisions of the election law. The members of such board shall serve without compensation. [El. Sup. § 1338.]

This section has no corresponding section in the act of 1881. It is not applicable to cities or towns.

Sec. 4700*b*. County board of elections. 17. In each county in the State, the clerk of the circuit court and two persons by him appointed, one from each of the two political parties that cast the largest number of votes in the State at the last general election, shall constitute a county board of election commissioners. Said appointments shall be made in all respects as appointments to the state board of election commissioners are required to be made by the governor of the State, except that the privilege of nomination shall belong to the chairmen of the county central committees of the two parties aforesaid. It shall be the duty of such board to prepare and distribute ballots for election of all officers to be voted for in such county other than those who are to be voted for by all the electors of the State, in compliance with the provisions of this act. The members of such board shall serve without compensation. [El. Sup. § 1339.]

This section has no corresponding section in the act of 1881. It is applicable to cities and towns. The town or city clerk acts in place of the clerk of the circuit court, § 4710*m*; and they appoint the commissioners, who, with themselves, respectively constitute the town and city board of elections.

Sec. 4700*c*. Printing ballots. 18. The said board of election commissioners shall cause to be printed on the respective ballots the names of the candidates nominated by the conventions of any party that cast one per cent. of the total vote of the State at the last preceding general election, as certified to said boards by the presiding officer and secretary of such convention, or in case of primary election, by the chairman and secretary of any county or township committee; and also the names of any candidates for any office when petitioned so to do by electors qualified to vote for

such candidates, as follows: For a state officer, or any officer for whom all the electors of the State are entitled to vote, five hundred petitioners; for a representative in congress from any congressional district, two hundred petitioners; for a county officer, member of the general assembly, circuit judge or prosecuting attorney, twenty-five petitioners; for an officer of a township, ward or other division less than a county, twenty petitioners. The signatures to such petition need not be appended to one paper, but no petitioner shall be counted, except his residence and post-office address be designated. Such petition shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers desire and are legally qualified to vote for such candidates; and may designate a brief name or title of the party or principle which said candidates represent, together with any simple figure or device by which they shall be designated on the ballots. The certificate of nomination by a convention or primary election shall be in writing, and shall contain the name of each person nominated, his residence and the office for which he is nominated, and shall designate a title for the party or principle which such convention or primary election represents, together with any simple figure or device by which its list of candidates may be designated on the ballots; said certificate shall be signed by the presiding officer and secretary of such convention, or by the chairman and secretary of the county, city or township committee, who shall add to their signatures their respective places of residence, and acknowledge the same before an officer duly authorized to take acknowledgments of deeds. If the certificate of nomination of any state convention shall request that the figure or device selected by such convention be used to designate the candidates of such party on the ballots for all elections throughout the State such figure or device shall be so used until changed by request of a subsequent state convention of the same party. Such device may be the figure of a star, an eagle, a plow, or some such appropriate symbol, but the coat of arms or seal of the State or of the United States, the national flag, or any other emblem common to the people at large shall not be used as such device. A certificate of such acknowledgment shall be appended to such instrument. In case of death, resignation or removal of any candidate subsequent to nomination, unless a supplemental certificate or petition of nomination be filed, the chairman of the state, county, city or township committee shall fill such vacancy. In case of a division in any party, and claim by two or more factions to the same party name, or title, or figure, or device, the board of election commissioners shall give the preference of name to the convention held at the time and place designated in the call of the regularly constituted party authorities, and if the other faction shall present no other party name, title or device the board of election commissioners shall select a name or title, and place the same before the list of

candidates of said faction on the ballot, and select some suitable device to designate its candidates. If two or more conventions be called by authorities claimed to be the rightful authorities of any party, the proper board of election commissioners shall select some suitable devices to distinguish one faction from the other, and print the ballots accordingly: *Provided, however,* That if any political party entitled to nominate by convention shall in any case fail to do so, the names of all nominees by petition for any office who shall be designated in their petitions as members of and candidates of such party, shall be printed under the device and title of such party on the ballots, as if nominated by convention. Certificates and petitions of nomination of candidates for offices to be voted [for] by the electors of the entire State shall be filed with the governor of the State. Certificates and petitions of nomination of candidates for offices to be voted for by electors of any district or division of the State exclusively shall be filed with the clerks of the circuit courts of the counties or county included in or including such district or division. [El. Sup. § 1340.]

1. This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

2. A nomination made by persons not entitled to vote has been held to be invalid, even though at a previous election they were qualified and voted, 9 Supr. Ct. Rep. (N. S. Wales) 169.

3. One who has signed a petition to secure the printing of the ticket on the official ballot can not defeat the petition after it is filed by withdrawing his name, even though it reduces the number below that required, nor by signing a remonstrance, which has the same effect as withdrawing the remonstrator's name, 30 W. R. (Eng.) 923, S. C. 8 Q. B. Div. 450; 51 L. J. Q. B. 335; 46 J. P. 390. Same principle, 24 Ind. 146.

4. Failure to state, in a ward nomination, that the ward is within the city will not vitiate the nomination, Wigmore, Australian Ballot System, p. 187; Browning (Victoria) p. 170. A substantial compliance with the statute is all that is required, 5 W. W. & A'B (L) (Victoria) 143.

5. A statute required all voters to be registered, and the registry number of the nominee was required to be inserted in the nomination paper. By mistake the wrong registry number was inserted in that paper. It was held that the defect was fatal, the error not being a clerical one, nor open to a different interpretation, and that the nomination was properly disallowed, 42 L. T. (N. S.) 776, S. C. 5 C. P. Div. 253; 49 L. J. (C. P.) 474; 29 W. R. 102; 44 J. P. 587. Disapproved, 24 Journal Juris. 293.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4700*d*. Name of candidate, when not printed. 19. If any certificate or petition of nomination shall contain the name of more than one candidate for any office to be filled, neither name shall be printed as a candidate for such office. If any person shall join in nominating by petition more than one nominee for any office to be filled, such person shall not be counted as a petitioner for either nomination. If any person has been nominated as a candidate for any office by convention, and, also, as a candidate for the same office by petition, his name shall be placed on the ballot but once, to wit: In the list of candidates nominated by such convention;

and the place occupied by his name in such petition shall be left blank: *Provided*, That if such candidate shall, in writing, prior to the last day for filing nominations, request that his name be printed as nominated by petition, it shall be so printed, and shall be omitted from the list nominated by convention.

This section applies to cities and towns. It has no corresponding section in the act of 1881.

Sec. 4700*e*. Preservation of certificates and petitions. 20. The governor of the State and county clerks shall cause to be preserved in their respective offices all certificates and petitions of nominations filed therein under the provisions of this act for six months after the election for which such nominations were made.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4700*f*. Time in which to file certificates. 21. Certificates and petitions of nomination filed with the governor of the State, shall be filed not more than sixty days, and not less than twenty days, before the day fixed by the law for the election of the persons in nomination. Certificates and petitions of nomination herein directed to be filed with the clerk of a county, shall be filed not more than sixty and not less than fifteen days before election. [El. Sup. § 1343.]

1. The last half of this section is applicable to cities and towns. It has no corresponding section in the act of 1881.

2. Where a nomination paper was not filed within the requisite time the election was held void, although no other candidate was nominated and voted for, 1 Australian Jur. R. 56. See 4 Australian Jur. R. 151. Nominations made only nineteen days before election are invalid, 5 Australian Jur. R. 35. See 9 Supr. Ct. R. (N. S. Wales) 177; 1 C. P. Div. 670, S. C. 45 L. J. C. P. 550; 35 L. T. 58. Nomination certificates may be handed back to have omissions supplied or mistakes corrected, 5 Victoria L. Rep. 334; 5. W. W. & A'B (L) 145; Melbourne *Argus*, Sept. 15, 1868. See Hodgin's El. Cas. (Can.) 705; and L. R. 9 C. P. 720, S. C. 43 L. J. C. P. 370; 30 L. T. 610; 22 W. R. 707. When corrected, filing dates from the date of correction, 1 C. P. Div. 670; S. C. 45 L. J. C. P. 550; 35 L. T. 83.

Sec. 4700*g*. Governor notifies clerk. 22. Not less than eighteen days before an election of the State to fill any public office for which all the electors are entitled to vote, the governor of the State shall certify to the county clerk of each county the name and the place of residence of each person nominated for such office, as specified in the certificates and petitions of nominations filed with the governor of the State, and shall designate therein the device under which the group or list of candidates of each party will be printed, and the order in which they will be arranged. [El. Sup. § 1344.]

This section is not applicable to cities and towns. It has no corresponding section in the act of 1881.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4700*h*. Publication of nominations. 23. At least seven days before an election to fill any public office at which the electors of any county are entitled to vote, the county clerk of such county shall cause to be published in at least two weekly newspapers within the county, the nominations to office, certified to him by the governor of the State, and also those filed with the county clerk. He shall make two publications in each of such newspapers before election; one of such publications in each newspaper shall be upon the last day upon which such newspaper is issued before election. Such publication shall be made in two newspapers representing the political parties that at the last preceding general election cast the largest number of votes in the State, if such papers there be: *Provided*, That in all cities where a daily paper is printed and published, such notice shall also be published twice, as aforesaid, in two daily papers representing such political parties, if such there be. The list of nominations published by the county clerks shall be arranged, as far as practicable, in the order and form in which they will be printed upon the ballots, and shall designate the devices under which the group or list of candidates of each party will be printed.

1. There is no section corresponding to this one in the act of 1881. It is applicable in part to towns and cities; the town and city clerks acting in place of the county clerk.

2. Where a town clerk was required to give notice "seven days at least" before an election, and nominations were to be filed at least two whole days before the election; and the election was to occur on November 1, and the clerk gave notice October 22, and required nominations to be sent by October 28, it was held that the clerk could not fix the date of sending in nominations, and that a nomination filed October 29 was valid, 15 L. T. N. S. 289. So where a statute required nominations to be made "seven days at least" before election day, Sundays being excluded, it was held that the election occurring on Monday, November 1, the last day for receiving nominations was Friday, October 22, 1 C. P. Div. 670; S. C. 45 L. J. C. P. 550; 35 L. T. 58. The reckoning was based upon the phrase "at least," which requires "seven clear days to intervene, exclusive of the days of election and nomination," 9 Supr. Ct. R. (N. S. Wales) 177.

3. A statute required a town clerk to post nominations in his office on the day after nomination. It was held that this was directory only, and a failure to post until the second day did not avoid the election, 4 Ontario Prac. Rep. 218.

4. An election notice was published in a supplement to a proper newspaper for such notice, which supplement was described as an advertising sheet and sent only to special subscribers, though obtainable by all before the time for nominations. It was held that "the fact that the advertisement appeared in a part of the paper distinct from the ordinary news did not affect the question." 1 Australian Jur. R. 56. See 2 N. S. Wales L. Rep. 87.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4700*i*. Governor and clerk's duties. 24. The governor of the State shall not certify the name of a candidate whose certificate of nomination shall have been filed in his office who shall have notified him in a writing signed and executed with the formalities prescribed for the execution of an instrument to entitle it

to record that he will not accept the nomination contained in the certificate or petition of nomination. The county clerk shall not include in the publication to be made according to section twenty-three [§ 4700*h*] hereof, the name of any candidate whose certificate, or petition of nomination shall have been filed in his office who shall have notified him in like manner that he will not accept the nomination. The names of such candidates shall not be included in the names of the candidates to be printed in the ballots as hereinafter provided. [El. Sup. § 1346.]

There is no corresponding section to this one in the act of 1881. The town and city clerks act wherever the county clerk is required to perform a duty.

Sec. 4700*j*. Constitutional amendments. 25. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the State for popular vote, the secretary of state shall duly, and not less than thirty days before election, certify the same to the clerk of each county in the State, and the clerk of each county shall include the same in the publication provided for in section twenty-three in this act. [El. Sup. § 1347.]

There is no corresponding section to this one in the act of 1881. This section is applicable to cities and towns, especially when a vote is taken on the construction of water-works under § 3265.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4701. Ballots. 26. The board of election commissioners shall cause the names of all candidates of their respective jurisdictions to be printed on one ballot, all nominations of any party or group of petitioners being placed under the title and device of such party or petitioners as designated by them in their certificate or petition, or if none be designated under some suitable title and device. The ballots shall be of uniform size and of the same quality and color of paper, and sufficiently thick that the printing can not be distinguished from the back. All ballots prepared by the state board of election commissioners shall be printed on red tinted paper and put up in blocks of one hundred each. All ballots prepared by the county boards of election commissioners shall be printed on white paper. If the same device for designating candidates be selected by two parties or groups of petitioners, it shall be given to the one which first selected it, and a suitable device shall be selected for the other. The device named and list of candidates of the Democratic party shall be placed in the first column on the left hand side of said ballot; of the Republican party in the second column; of the Prohibition party in the third column, and of any other party in such order as the board of election commissioners shall decide. The device of each party shall be enclosed in a square of not less than one and one-half inches on each side, and shall be placed at the head of the list of candidates of the party. Immediately under it shall be placed the name or title of the party

ticket, and immediately under the name or title the list of candidates of the party, such names being placed three-fourths of one inch apart from center to center of the name, the name of each candidate having immediately on its left a square three-eighths of an inch on each side, and the general arrangement of the ballot shall conform as nearly as possible to the following:

DEVICE.	DEVICE.	DEVICE.
Democratic Ticket.	*Republican Ticket.*	*Prohibition Ticket.*
For Governor,	For Governor,	For Governor,
[Dem.] Courtland C. Matson.	[Rep.] Alvin P. Hovey.	[Prohib.] Joseph D. Hughes.
For Lieut.-Governor,	For Lieut.-Governor,	For Lieut.-Governor,
[Dem.] William R. Myers.	[Rep.] Ira J. Chase.	[Prohib.] Robert Gale.

1. This section is applicable to cities and towns. It is very radically different from the corresponding section in the act of 1881. The decisions under the old section (which can be of no aid in construing this section), are as follows: 29 Ind. 308; 35 Ind. 275; 39 Ind. 363; 99 Ind. 261.

2. Under the old statute it was held that ballots so printed on the inside that lawful names and designations could be seen through the paper were not illegal, 65 Ind. 393. See 99 Ind. 261.

3. A law requiring a number to be placed on a ballot, to correspond with the number set opposite the name of the person casting it, on the poll book, is *unconstitutional;* because it violates the *secrecy* of the ballot, 38 Ind. 89.

4. In Canada it has been decided that the *omission* of the *name* of one candidate from the ballot does not *per se* vitiate the election; that there must be reasonable evidence that the result of the election had been thereby affected; as, for example, that votes would have been cast for him sufficient to have changed the result, 4 Ontario Prac. Rep. 218; 6 Ontario Prac. Rep. 314.

5. A was nominated by two parties for the same office. One nomination was legal and the other was not, but his name appeared twice, as the candidate of the two parties, for the same office, on the official ballot. He received 70 votes under one nomination and 301 under the other, and 8 voters marked his name as it appeared in both the two places. It was held that while his name was illegally once on the ballot, yet as all the votes were intended for the same person, and that person having received at least one valid nomination, all votes cast for him should be added together, L. R. 10 C. P. 476, S. C. 32 L. T. R. N. S. 602; 44 L. J. C. P. 217; 23 W. R. 700.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4701*a*. Vacancy on ticket, how filled. 27. In case of the death, removal or resignation of any candidate after the printing of such ballots and before such election, it shall be lawful for the chairman of the state, district or county political organization of which such candidate was a member to make a nomination to fill such vacancy, and to provide the election board of each precinct in which such candidate is to be voted for with a number of pasters containing only the name of such candidate at least equal to the number of ballots provided each precinct, but no pasters shall be

given to or received by any one except such election board and such chairman, and it shall be the duty of the polling clerks to put one of such pasters, in a careful and proper manner and in the proper place, on each ticket before they shall sign their initials thereon. [El. Sup. § 1349.]

This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

Sec. 4701*b*. Printer of ballots. 28. If the printer of such ballots, or any person employed in printing the same, shall give or deliver, or knowingly permit to be taken, any of said ballots by any person other than a member of the board of election commissioners, for which such ballots are being printed, or shall print or cause or permit to be printed any ballot in any other form than the one prescribed by this act, or with any other names thereon, or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the said board of election commissioners, he shall be guilty of felony, and on conviction thereof shall be imprisoned in the state penitentiary not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1350.]

This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4701*c*. Distributing ballots. 29. It shall be the duty of each county clerk to appear in person, or by specially authorized deputy, bearing credentials given under the seal of the circuit court, at the office of the governor of the State not more than sixteen, nor less than ten days prior to each general election, and the state board of election commissioners shall thereupon deliver to the said clerk ten ballots for every five voters and fraction thereof in each precinct of his county at the last presidential election, or if a new precinct has been established in such county, ten ballots for every five voters of the estimated vote as reported by the board of county commissioners: *Provided, however,* That if it shall be made to appear by the affidavit of such clerk that any precinct has so increased in population as to have fifty per cent. more voters than at last presidential election, or at the time of estimate by the board of county commissioners, the state board of election commissioners shall deliver to him two ballots for every voter so declared by him under oath to be resident in said precinct. The ballots shall, in the presence of the clerk, be wrapped and tied in packages, plainly marked, one for each precinct, and securely sealed with wax, and the clerk shall give his receipt for the same. And for the safe sealing of such ballots such board shall provide itself with a seal of such design as it may deem proper, but the same design shall not be used for any two consecutive elections.

The state board of election commissioners shall also provide and inclose in each of said sealed packages three stamps bearing a cross (X), or such other device as they may select, together with the ink-pads or other necessary apparatus ready for use. In addition to the precinct packages, the state board of election commissioners shall deliver to each clerk a package, wrapped and sealed in his presence, containing two thousand state ballots, and twelve stamps with their necessary ink-pads, which package shall remain in the custody of the county board of election commissioners and shall not be opened by them except for the purpose of supplying a precinct whose ballots or stamps have been lost or destroyed, on due showing of such fact as hereinafter provided. The state board of election commissioners shall, from time to time, certify to the auditor of state the necessary expenses of the preparation and distribution of the state ballots and stamps, and the auditor shall audit and issue his warrants for the same, which shall be paid out of any funds in the state treasury not otherwise appropriated.

1. This section is applicable to cities and towns. There is in the act of 1881 no section corresponding to it.

2. Where there was a failure to deliver the official ballots, and for that reason no election was held in certain polling places in a district, the election was held void, there being a substantial failure of opportunity for the electors to vote, 31 L. T. N. S. 69; S. C. 2 O'Malley & Hardwicke (Eng. El. Cas.) 78.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4701*d*. Pay of clerk—Messenger. 30. An allowance shall be made to the clerk by the board of county commissioners of five cents per mile for the distance necessarily traveled in going to and returning from the office of governor of the State; but in case said clerk of any county shall fail to appear at the office of the governor of the State by the close of the tenth day prior to election, the state board of election commissioners shall forthwith dispatch a special messenger to such county with the ballots for the county; which messenger, before receiving such ballots, shall take and subscribe to an oath, to be administered to him by the secretary of state, which oath shall be filed with said board of election commissioners, and shall be in the words following:

STATE OF INDIANA, }
COUNTY OF MARION, } ss.

I, ——— ———, swear (or affirm, as the case may [be]) that I will take charge of the election ballots delivered to me by the state board of election commissioners for the county of ———, and will safely deliver said ballots in sealed packages, and in the same condition as received by me, to the clerk of said county at the earliest time that I can reach the county seat of said county. So help me God.

——— ———.

Subscribed and sworn to before me this ——— day of ———, 18—.

——— ———.

And in such case said messenger shall be allowed three dollars per day for the time necessarily employed, and three cents per mile for the distance necessarily traveled by him, which allowance shall be certified to the treasurer of such county, and deducted from the first moneys thereafter accruing to such clerk payable by the treasurer. The amount so deducted shall be remitted by the county treasurer to the treasurer of state. [El. Sup. § 1352.]

This section has no application to a city or town; nor has it any corresponding section in the act of 1881.

Sec. 4701*e*. Delivering ballots to wrong person. 31. If any member of the board of election commissioners shall give or deliver to any other person any of said ballots, or shall permit any of them to be taken away, except as herein provided, he or they shall be guilty of a felony, and on conviction shall be punished by imprisonment in the state penitentiary for not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1353.]

This section applies to cities and towns. It has no corresponding section in the act of 1881.

Sec. 4701*f*. Felony to take away ballots. 32. If any person shall take or remove in any manner, feloniously or with the consent or permission of the custodian for the time, from any place where they may lawfully be under this act, any of such ballots or stamps, or be found in custody or possession of such ballots or stamps (except as an official or custodian under this act, or while within the polling place for the purpose of voting); or if any such custodian or official shall consent to, or permit, any of such ballots or stamps to be removed or carried away from the place where they may lawfully be by any person, except an official or custodian under this act whose duty it is to receive the same, such person, custodian or official shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment in the penitentiary at hard labor for not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1354.]

This section applies to cities and towns. There is no section in the act of 1881 that corresponds to it.

Sec. 4701*g*. Inspector, ballots delivered to. 33. It shall be the duty of each election inspector, or in case he can not attend, some other member of the election board authorized in writing by the inspector, to appear at the office of the clerk of the circuit court of his county not more than three nor less than two days before each election, and the county board of election commissioners shall deliver to him the sealed package of ballots and the stamps provided for his precinct by the state board of election commis-

sioners, and also ten of the local ballots printed under the direction of the county board of election commissioners for each five or fraction thereof of the number of votes cast at such precinct at the last presidential election; or if a new precinct for each five or fraction of five voters, as estimated by the county commissioners: *Provided, however*, That in case it be made to appear by affidavit of such inspector that the number of voters in his precinct has increased more than fifty per cent. since the last presidential election or estimate by the board of county commissioners, there shall be delivered to him two ballots for each voter so declared under oath by him to reside in the precinct. The local ballots shall be wrapped and tied in packages and securely sealed with wax in the presence of said inspector or his representative, who shall receipt for the same; and for the safe sealing of such ballots the county board of election commissioners shall provide themselves with a seal of such design as they may deem proper, but the same design shall not be used at any two consecutive elections, and said packages shall not be opened until delivered to the election board of the respective voting precincts to which they are directed, and said boards shall be fully organized and ready for the reception of votes, as in this act provided. [El. Sup. § 1355.]

This section applies to cities and towns. There is no section corresponding to it in the act of 1881.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4701*h*. Poll clerks and duties. 34. At the opening of the polls, after the organization of, and in the presence of, the election board, the inspector shall open the packages of ballots in such a manner as to preserve the seals intact. He shall then deliver to the poll clerk of the opposite political party from his own, twenty-five each of the state and local ballots, and to the other poll clerk the stamps for marking the ballots. The poll clerks shall at once proceed to write their initials in ink on the upper right hand corner of the back of each of said ballots, in their ordinary handwriting, and without any distinguishing mark of any kind. As each successive elector calls for a ballot the poll clerks shall deliver to him the first signed of the twenty-five ballots of each kind; and the inspector shall immediately deliver to the poll clerks another ballot of each kind, which the poll clerk shall at once countersign as before, and add to the ballots already countersigned, so that it shall be delivered for voting after all those theretofore countersigned.

1. This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

2. A ballot without the official initials on the back is void, 2 O'Malley & Hardwicke (Eng. El. Cas.) 215, S. C. 1 Ct. of Sess. 925, see § 4709*a*; but in Canada such absence does not vitiate the ballot, 12 Can. L. Jr. 113; 20 Low. Can. Jur. 22; 9 Qub. L. Rep. 20; 7 Can. Supr. Ct. 248; 13 Qub. L. Rep. 64; 16 Q. B. Div. 739; S. C. 54 L. T. N. S. 289; and the same decision has been rendered

in Australia, 5 W. W. & A'B (L) 226, S. C. Melbourne *Argus*, Sept. 16, 1867; Browing (Australia) 173; S. C. *Morning Herald*, of Sidney, March 11, 1876. Signing all the ballots before the polls open, to save time, and keeping them until delivered to each voter as required, does not render the election void, 2 Ct. of Sess. 299.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

SEC. 4701*i*. Cards—Instructions. 35. The county board of election commissioners of each county shall cause to be printed in large type on cards, in English and such other language as they deem necessary, instructions for the guidance of electors in preparing their ballots. They shall furnish twelve of such cards in each of the languages determined upon by them to each of the election inspectors at the same time they deliver to him the ballots for his precinct. Each inspector shall cause to be posted one of each of said cards in each place or compartment provided for the preparation of ballots, and one of each kind of such cards at or near to the outer end of the chute leading to the polling place, and not nearer than fifty feet of the polling place, and not less than three of each of such cards, and three samples of each of the state and local ballots in and about the polling place at the opening of the polls on the day of election, which sample ballots shall be printed on different colored paper than the genuine ballots. Said cards shall contain full instructions to the voters as to what must be done: First, to obtain ballots for voting; second, to prepare the ballots for voting; third, to obtain a new ballot in place of one accidentally defaced, mutilated or spoiled; also, copies of sections forty-three, fifty, fifty-five, fifty-six, fifty-nine and sixty of this act. [El. Sup. § 1357.]

This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

SEC. 4701*j*. Special messenger with ballots. 36. In case any inspector or his representative shall fail to appear at the office of the county clerk by the close of the second day prior to any election, the county board of election commissioners shall forthwith dispatch a special messenger to his precinct with the ballots and stamps for such precinct. Such messenger shall be allowed two dollars for his time and five cents per mile for the distance necessarily traveled by him, and shall promptly report to such clerk and file with the receipt of the person to whom he delivered such ballots and stamp, and his affidavit stating when and to whom he delivered such ballots and stamps, and such inspector shall receive no compensation for his services at such election. [El. Sup. § 1358.]

This section applies to cities and towns. It has no corresponding section in the act of 1881.

SEC. 4701*k*. Inspector's neglect of duty. 37. Any inspector who shall willfully or negligently fail to appear at the clerk's office, in

person or by representative, as herein provided, shall be guilty of misdemeanor, and on conviction shall be fined not less than ten dollars, nor more than one hundred dollars, and shall thereafter be incompetent to serve as inspector. [El. Sup. § 1359.]

This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

Sec. 4701*l*. Loss of ballots. 38. If by any accident or casualty the ballots delivered to any clerk, inspector, or other messenger shall be lost or destroyed, it shall be the duty of such person in custody to report the loss at once to the board of election commissioners, from which the same were obtained, and make affidavit of the circumstances of the loss, whereupon such board shall at once re-supply such person. In case such person in custody fails or refuses to report and make proof of the loss, any qualified elector may do so, and thereupon such board shall at once send a new supply by special messenger, as provided in other cases. In case, for any reason, there should be found no ballots or other necessary means or contrivances for voting at the opening of the polls, it shall be the duty of the election board to secure the same as speedily as possible, and, if necessary, such board may have ballots printed: *Provided, however*, That such ballots shall conform as nearly as possible to the genuine ballots, and the printing and the care of the same shall be under the same provisions and penalties as the printing and care of the other ballots prescribed in this act. [El. Sup. § 1360.]

1. This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

2. The objection that the supply of ballots failed, or that sufficient accommodations had not been supplied, can not be raised as between two candidates upon a petition for a recount of the votes. The defect in supply must be sufficient to avoid the whole election, and therefore must be the subject of a special claim, and all the candidates must be made parties, 7 Can. Supr. Ct. 248. So where the supply gave out and the polls for that reason were closed for half an hour, during which a number of voters were prevented from voting, it was held that as the number that were prevented from voting was not sufficient to offset the result, the election was valid, 1 El. Cas., Ontario, 291.

Sec. 4701*m*. Preservation and burning of ballots. 39. The various boards of election commissioners shall preserve the ballots that are left over in their hands after supplying the precincts as hereinbefore provided, until six o'clock P. M. of the day of election, and shall then count and destroy, by totally consuming by fire, all of such ballots but one, which shall be securely pasted in the election record immediately preceding the place where the vote is to be recorded. They shall also cause to be entered below such ballot the number of ballots printed by them, the number delivered to each messenger and the number destroyed by them. [El. Sup. § 1361.]

This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

Sec. 4701*n*. Election rooms and booths. 40. It shall be the duty of the county commissioners in each county, before each election, to provide for and secure in each precinct of the county a suitable room in which to hold the election, and to have placed therein a railing separating the part of the room to be occupied by the election board from the remainder of the room and also three booths or compartments in which electors shall mark their ballots, screened from observation, each containing a counter or shelf. Booths shall be so constructed and arranged that all the members of the election board can see whether more than one voter enters any one of such booths at one time. The portion of the room set apart for the election board shall include a window at which the voter shall appear for challenge, and such voter shall immediately announce his full and true name to the challengers. The board of county commissioners shall also provide for each precinct a chute or passage with a railing, rope or wire on each side, commencing fifty feet away from, and leading to such polling place, passing such window for challenge, and thence to the entrance of the room in which the election is held. The expenses of such preparation shall be defrayed as other expenses of the county by the board of county commissioners. No election shall be held in a room in which spirituous, vinous or malt liquors are kept or sold. [El. Sup. § 1362.]

1. This section is applicable to cities and towns. It has no corresponding section in the act of 1881.

2. At a polling place two rooms were used, the election officers being in one, and the voting compartments in the other. There was an opportunity for other persons to stand at the landing between the two; but no actual violation of secrecy, in a contest, was proved. It was held that as no evidence of violation of secrecy was offered, and no injury was shown to have been suffered, the elected candidate should not be unseated on account of the act of the election officers, 9 Irish L. T. 161, S. C. 2 O'Malley & Hardwicke (Eng. El. Cas.) 201.

Sec. 4702. Challenges—Affidavits. 41. One challenger and one poll-book holder, appointed and designated by each party organization, shall be entitled to stand at the sides of the chute near the challenge window. No other person shall remain within fifty feet of the same, except for the purpose of offering his vote; and voters shall approach and enter the chute in the order in which they appear for the purpose of voting. If any person offering to vote shall be challenged by one of such challengers or by any member of the election board, he shall stand aside and shall not be entitled to vote unless he makes affidavit in writing that he is a qualified and legal voter of the precinct, and in such affidavit sets forth his name, residence, occupation, place or places of residence during the six months prior to the election, with the date of any removal within that time, and the names of two persons who have personal knowledge of his residence in the precinct thirty days and the township sixty days, and shall, in case he be a person required by this act to be registered, also produce the necessary certificate of

registration provided for in this act. He shall then be allowed to vote, unless the challanger or some qualified voter of the precinct make affidavit in writing that he knows or is informed and verily believes that the person offering to vote is not a legal voter in the precinct; and if the affidavit be on information and belief, he shall set forth the names of the person or persons from whom such information was obtained, and the person offering to vote shall not thereafter be allowed to vote, except one qualified voter of the precinct, who has been a freeholder and resident householder in the precinct for at least one year or a resident householder for two years next preceding such election shall make affidavit or affirmation in writing that of his personal knowledge such person offering to vote is a legal voter at the precinct: *Provided*, That if such person so offering to vote be challenged solely or for the additional reason that he is not a citizen of the United States, then such person so challenged for such reason shall take and subscribe the following oath:

I do solemnly swear (or affirm, as the case may be) that I have resided in the United States one year, and have declared my intention of becoming a citizen thereof in conformity with the laws thereof.

The other affidavits herein referred to shall be in the following form:

I do solemnly swear (or affirm, as the case may be) that I am a citizen of the United States; that I am now over the age of twenty-one, to the best of my information and belief; and that I have been a *bona fide* resident of this State for six months immediately preceding this election; that I have resided in the township sixty days, and in the precinct thirty days, and that I am now a *bona fide* resident of this precinct; that I am generally known by the name in which I now desire to vote, which is . . . .; that I have not voted and will not vote in any other precinct in this election; that my occupation is . . . .; that my present residence is . . . . (if in the city or town give the street or number), and that during the last six months prior to this election I have resided at . . . ., I have removed from . . . . to . . . . on the following date . . . .; and that . . . . and . . . . have personal knowledge of my residence in the precinct thirty days and in the township sixty days.

I swear that I am informed and believe that . . . . ., now offering to vote, is not a legal voter in this precinct, and that I obtained such information from . . . . and . . . .

I do solemnly swear (or affirm, as the case may be) that I am a qualified voter in this precinct; that I have been a freeholder and resident householder in this precinct for one year, or a resident householder for two years next preceding this election; that . . . . ., who now desires to vote, has resided in this State for six months immediately preceding this election; that he has

resided in this township sixty days, and in this precinct thirty days, at . . . . ; that he is now a *bona fide* resident of this precinct and a legal voter therein. These facts I know of my own personal knowledge. [El. Sup. § 1363.]

1. This section applies to cities and towns. It is radically different from the corresponding section in the act of 1881.

2. Challenge on ground that elector's vote is purchased, see § 4768*t*.

3. A judge or inspector of an election who, merely in consequence of an *error of judgment*, refuses to receive a legal vote is not liable to an action for such refusal unless he acted wrongfully and maliciously, 5 B. 138; 26 Ind. 264; 27 Ind. 492. But after the elector has taken the proper oath, while the judge and inspectors, or any two of them, may still refuse to receive his vote, yet they do so at the peril of being able to show that he was not a legal voter, upon a prosecution for refusing the vote. If the board is able to show that a vote rejected under such circumstances was an illegal vote, they are liable neither to a criminal nor a civil prosecution, 17 Ind. 536.

4. If the person offering to vote *takes* the prescribed *oath* or oaths, the election *board* is fully *justified* in receiving the vote; unless it can be shown that they acted corruptly, and were cognizant of the fact that he was not a legal voter, 17 Ind. 536.

5. It is the *duty* of the inspector or judge to *state* to one who offers to vote and is challenged the *qualifications* requisite to entitle him to vote, 17 Ind. 536.

6. The election board can not hear *testimony* relative to the right of any person to vote. The oath or oaths prescribed by the statute is the only evidence that they can receive, 17 Ind. 536.

7. Section 4768*q* prohibits the payment of challengers, poll-book holders, drivers, or any other party workers on election day. (Construction by the Marion superior court judges.)

Sec. 4703. Arrest of illegal voter. 42. If at any time during the election any qualified elector shall make affidavit before the inspector that any person who has voted is an illegal voter in such precinct, the person accused shall at once be arrested by the election sheriffs and by them delivered to the civil authorities. Immediately after the close of the election the inspector shall deliver such affidavit to some justice of the peace in the township, who shall proceed thereon as if the affidavit had been made before him. [El. Sup. § 1364.]

This section applies to electors in cities and towns. There is no directly corresponding section in the act of 1881.

Sec. 4703*a*. Perjury. 43. Whoever shall knowingly or willfully make a false affidavit, under any of the provisions of this act, shall be deemed guilty of perjury. [El. Sup. § 1365.]

This section applies to all voters in city and town elections. It has no directly corresponding section in the act of 1881.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4703*b*. Employment of voter. 44. No person entitled to vote at any general, national, state or county election, shall be employed upon the day on which such election shall be held in any manufacturing, mining, mechanical or mercantile establish-

ment or any railroad corporation in this State during the period of four hours after the opening of any election in the county in which such person is entitled to vote, except as to works of necessity, in which works of necessity every employee shall be given some period of four hours between the opening and closing of the polls on said day; and any circuit court may enforce the provisions of this section in term time or in vacation by mandate, or otherwise, upon the application of any voter: *Provided, however,* That in any such establishment or corporation the employer or employees may agree on any four hours between the opening and closing of the polls that will be most convenient. Every officer of any corporation, owner, superintendent, overseer or foreman, who employs or permits to be employed any person in violation of this section, shall be guilty of a misdemeanor, and fined not less than fifty nor more than five hundred dollars.

Sec. 4704. Method of voting. 45. When a voter shall have been passed by the challengers, or shall have sworn in, he shall be admitted to the election room: *Provided, however,* That not more than three voters shall be allowed in the room at one time. On entering the room the voter shall announce his name to the poll clerks, who shall register it. The clerk holding the ballots shall deliver to him one state and one local ballot, and the other clerk shall thereupon deliver to him a stamp, and both poll clerks, on request, shall give explanation of the manner of voting; if deemed necessary, by unanimous consent of the board, an interpreter may be called. The voter shall then, and without leaving the room, go alone into any of the booths which may be unoccupied and indicate the candidates for whom he desires to vote by stamping the square immediately preceding their names, and indicate his preference on any question of constitutional amendments or other special matter by stamping in front of the words "Yes" or "No" under such questions: *Provided, however,* That if he shall desire to vote for all candidates of one party or group of petitioners, he may place the stamp on the large square enclosing the device and preceding the title under which the candidates of such party or group of petitioners are printed, and the vote shall then be counted for all the candidates under that title. If the voter stamps the large square enclosing the device, he shall not stamp elsewhere on the ballot, unless there be no candidate for some office in the list printed under such stamped device, in which case he may indicate his choice for such office by stamping the square to the left of the name of any candidate for such office on any other list; a stamp on a ballot in violation of this provision shall be treated as a distinguishing mark. If a stamp touches a square it shall be counted on the square, but a stamp that touches no square shall be treated as a distinguishing mark. Before leaving the booth or compartment, the voter shall fold his ballots separately, so that no part of

the faces thereof shall be exposed, and so that the initials of the poll clerks shall be exposed, and on leaving the booth or compartment shall return the stamp to the poll clerk and deliver the ballots to the inspector, or to the judge who may temporarily be authorized to act for him, who shall forthwith, in the presence of the voters and of the election board, deposit the same in the respective ballot boxes, the state ballot in the red ballot box, and the local ballot in the white ballot box; and the ballot clerks shall write the word "voted" after the name of the voter on the poll lists: *Provided, however,* That if any elector shall show his ballot, or any part thereof, to any other person, after the same shall have been marked, so as to disclose any of the candidates voted for, such ballot shall not be deposited in the ballot box. A minute of such occurrence shall be made on the poll list, and such person shall not be allowed to vote thereafter. If a voter shall offer to vote a ballot so folded as not to disclose the initials of the poll clerks and also not disclosing the face of the ballot, the election board shall direct him to return to the booth and fold his ballot properly. After voting, the voter shall leave the room, but no voter to whom a ballot and stamp or either have been delivered shall be permitted to leave the room without voting the ballots or returning them to the poll clerk, or without returning the stamp to the poll clerk from whom he received it. Any voter who shall attempt to leave the room with a ballot or stamp in his possession shall be at once arrested on demand of any member of the election board.

1. This section applies to elections in cities and towns. It has no corresponding section in the act of 1881.

2. The *objects* of the *election law* of 1889 are two—*secrecy* and purity of elections, 12 Q. B. Div. 452, S. C. 45 L. J. M. C. 157; 34 L. T. 660; 13 Cox C. C. 193. Secrecy is for the benefit of the voter, and he may, when he deposits his ballot, announce aloud, without losing his vote, the candidate for whom he votes, 7 Leg. News (Queb.) 414, S. C. 1 Montreal L. R. 121.

3. A voter tendered his ballot, but on being improperly required to take a certain oath if he desired to vote, he refused to do so, and his ballot was rejected. In a contest over the election it was held error to allow him to testify that he intended to vote for a certain candidate; for the policy of the law forbade that the intention of the voter should be disclosed. The vote was not counted, Hodg. El. Cas. (Can.) 500. But where an election officer improperly refused to give electors ballots, on the ground that they were not registered, it was considered that they could testify in a contest for whom they desired or intended to vote, and that their votes should be counted for that candidate, such a proceeding not violating the policy of the law, and any other decision would put it into the power of the election officer to control the election, Hodg. El. Cas. (Can.) 671, S. C. 11 Can. L. J. 162. See 37 U. C. Q. B. 134.

4. This section imposes the duty upon the clerk having the ballots marked with initials in his possession to see that the ballot he delivers to the voter is properly marked, and to be present during the voting, so that voters, before depositing their ballots, can show to the inspector the official initials on the back of the ballot in accordance with the statute. For a breach of these duties, which are merely ministerial, an action lies by a party aggrieved, for example, who has thereby lost the election through votes given to him being void for want of the proper initials, without malice or want of reasonable care on the part of the clerk. The inspector or judge receiving the ballot is not liable for

the clerk's failure to perform his duties, inasmuch as he does not appoint him, and the relation of master and servant does not exist, L. R. 8 C. P. 489, 42 L. J. C. P. 217; 21 W. R. 786; 29 L. T. 210. This case is critically reviewed in 17 Sol. Journal, 644. For the liability of election officers, see 21 Ir. L. T. 310, and 11 Cent. L. Jr. 141.

5. A man may take a sample ticket into a booth and compare it with a genuine ticket and stamp his genuine ticket to conform with the sample. These sample tickets do not violate the law, because they are not counterfeits or imitations. They are merely sample ballots, and the law provides they may be printed and used as they are used now. It is no violation of law for a man to have these sample tickets in his possession at any time or place, while it is a violation to have a genuine ticket in possession except during the few minutes between receiving, preparing, and voting it.

INSTRUCTIONS TO VOTERS.

6. *First.* You must get your ballots of the polling clerks in the election room.

Second. If you want to vote a straight ticket, stamp the square at the top of the name of the party for whose candidates you wish to vote. If you do not wish to vote a straight ticket, then do not stamp the square at the top of the name of your party, but stamp the square to the left of the name of each candidate for whom you desire to vote, on whatever list of candidates it may be.

Third. Do not mutilate your ballot, or mark it either by scratching a name off or writing one on, or in any other way, except by the stamping on the square or squares, as before mentioned. Otherwise the ballot will not be counted.

Fourth. After stamping your ballots, and before leaving the booth, fold them separately, so that the face of them can not be seen, and so that the initial letters of the names of the polling clerks on the back thereof can be seen. Then hand your ballots to the inspector, the stamp to the polling clerk, and leave the room.

Fifth. If you are physically unable to stamp your ballots, or can not read English, so inform the polling clerks, and tell them how you wish to vote and they will stamp your ballots for you. But the voter and clerks, should not permit any other person to hear or see how the ballots are stamped.

Sixth. If you should accidentally or by mistake deface, mutilate or spoil your ballot, return it to the poll clerks and get a new ballot.

Seventh. You may use a "paster ballot," either upon the state or local ballot, or upon both of them.

Sec. 4705. "Paster ballot." 46. In addition to the state and local ballot which the clerk is to deliver to the voter in the election room under the provisions of section forty-five of the act of which this act is an amendment, the voter may take with him into the booth a printed ballot or ballots of his own selection or preparation to be known as a paster ballot or ballots, and designed to be pasted upon either such state or local ballot, or upon each of them. If such paster ballot is designed to be pasted upon the state ballot, it shall be in the nature of a complete ticket and shall contain a complete list of all offices to be filled at the election where used by the vote of the electors of the whole State, and shall contain the name of one person for each and every one of such offices. If such paster ballot is designed to be pasted upon the local ballot it shall be in the nature of a complete ticket, and contain a complete list of all offices to be filled at such election for

the filling of which the electors of the county where used are entitled to vote other than offices which are filled by the vote of the electors of the whole State, and it shall also contain the name of one person for each and every one of such offices in such list. The said paster ballots shall be in the form indicated as follows:

For Governor,

COURTLAND C. MATSON.

For Lieutenant-Governor,

WILLIAM R. MYERS.

They shall be printed in plain black ink upon white paper. The paper shall not be more than two inches in width, and of sufficient length to contain the complete list of offices and names as above specified. The names of the persons upon said list, as well as of the offices, shall be printed one below another in the manner above indicated. The distance from the center of the name of any person in such list to the center of the name of the person immediately below in such list, shall be three-fourths of an inch, in order that the names in such list when pasted upon the State or local ballot will conform to the squares thereon. Such pasters shall contain no heading, no printing save as above indicated, no writing, no blank nor any distinguishing marks of any kind whatever. Such paster ballot may be gummed upon the back and pasted upon the state or local ballot accordingly as it is designed in such manner as that the squares upon the state or local ballot to the left of any list of names printed thereon, will come immediately to the left of, and opposite respectively the names printed upon such paster ballot and in such manner as that the state or local ballot will not show when folded that it contains a paster. The voter may then indicate his choice for any office by stamping the square upon the state or local ballot immediately to the left of the name printed upon such paster ballot when pasted. He shall in no other manner attempt to indicate his choice. Any stamps upon the state or local ballot elsewhere shall be deemed a distinguishing mark and render the ballot void. If the ballot contains no distinguishing mark, the election board shall deem and count as the voter's choice the names of the persons upon such paster ballot having the square immediately to the left stamped, and they shall count none other. It shall be unlawful for any person to use the paster ballot provided for in this section unless he desires to vote for one or more persons for one or more offices respectively to be filled at such election, the names of which person or persons are not printed upon the state or local ballot, as the case may be, as a candidate or candidates for such office or offices respectively. And any paster which contains the names of persons only for the respective offices whose names are printed upon

the state or local ballots as candidates for the same offices respectively shall be void and the ticket containing the name shall not be counted. The voter who attempts to use a paster ballot under the provisions of this section must prepare or select a paster ballot containing a complete list of names for every office for whom he desires to vote and must vote for names contained upon the paster and none other. If a state or local ballot contains a paster placed thereon by the voter, as provided for in this section, any stamp upon such state or local ballot other than are on the squares at the left of the paster ballot, shall be deemed a distinguishing mark and render the whole ticket void. Every violation of the provisions of this section by a voter shall be deemed to be an attempt to distinguish his ballot and shall render the same entirely void.

SEC. 4705*a*. **Mutilated ballots.** 47. Not more than one person shall be permitted to occupy any booth at one time, and no person shall remain in, or occupy a booth longer than may be necessary to prepare his ballot and in no event longer than five minutes. Not more than three persons other than the election officers shall be permitted to enter, or be in the election room at any one time, and no voter or person offering to vote shall hold any conversation or communication with any other person than a member of the election board while in the election room. Any person who shall by accident or mistake spoil, deface or mutilate his ballot may, on returning the same to the poll clerks and satisfying them that such spoiling, defacing or mutilation was not intentional, receive another in place thereof, and such clerks shall make a minute of the fact on the poll list at the time, and the mutilated ballot shall then be destroyed by the elector in the presence of the board.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

SEC. 4705*b*. **When poll clerks can prepare ballots.** 48. Any elector who declares that by reason of physical disability or inability to read the English language, he is unable to mark his ballot, may declare his choice of candidates to the poll clerks, who, in the presence of the elector and in the presence of each other, shall prepare the ballots for voting in the manner hereinbefore provided, and on request shall read over to such elector the names of the candidates as marked. Any one making a false declaration under the provisions of this section shall, upon conviction, be fined in any sum not exceeding five dollars and be disfranchised for a period of five years, and any poll clerk or poll clerks who shall deceive any elector in selecting or marking any ballot, or mark the same in any other way than as requested by said elector, shall be guilty of felony, and on conviction, shall be imprisoned in the penitentiary for not less than two nor more than five years, and be

disfranchised for any determinate period not less than five years. [El. Sup. § 1370.]

This section applies to cities and towns. It has no corresponding section in the act of 1881.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4705c. Deposit of ballots by inspector. 49. No inspector of election, or judge acting for an inspector, shall deposit any ballot upon which the initials of the poll clerks, as hereinbefore provided for, does not appear, or any ballot on which appears externally any distinguishing mark, defacement or mutilation. If any inspector, judge, poll clerk or other person entrusted with the custody or control of any ballot or ballots, either before or after they have been voted, shall in any way mark, mutilate or deface any ballot or place any distinguishing mark thereon, either for the purpose of identifying the same (except by numbering protested ballots for future reference) or for the purpose of vitiating the same, he shall be guilty of a felony, and on conviction shall be imprisoned in the State's prison not more than ten nor less than five years, and fined in any sum not exceeding two thousand dollars.

1. This section applies to cities and towns. It has no corresponding section in the act of 1881.

2. An election officer in polling the votes of some fifty illiterate voters, instead of taking from each of them a written declaration, as required by statute, "that he was unable to read," asked each if he was able to read or write, and having received an answer in the negative, requested him to put his mark to the declaration of illiteracy, explaining what he conceived to be its effect thus: "you hereby sign that you are unable to read or write sufficiently to mark your ballot paper." He then openly marked the ballot paper as instructed by the voter in the presence of both candidates, their agents and the poll clerk, all of whom had taken the usual declaration of secrecy. It was held that there was substantially no violation of the principal of secret voting, and that the votes were not improperly taken. By one judge it was said that there was nothing in the act (and see our own act on this point) which made it necessary that the election officer and the voter to withdraw to another room, or which forbade the poll clerk or other officers lawfully present in the polling room from remaining there while the voter announced for whom he desired to vote. Another judge considered that the conduct of the election officer was perverse, the manifest policy of the law being that the voting should be in all cases as secret as under the circumstances it could be. Another judge thought that there was no violation of the law, as all those present, except a constable who was in another part of the room, had taken the oath of secrecy, 1 Election Cas. (Ontario) 88.

3. An illiterate voter requested instruction from some one present. An agent belonging to the voter's party, who was rightfully present, after the election officer had put a pencil (with which the marking was done) in the voter's hand, and the latter, who could not read, but had not declared his inability, had said he wished to vote for B., took the pencil and marked the ballots accordingly. It was held to be an improper proceeding; the election, however, was set aside on other grounds, Hodg. El. Cas. (Can.) 283.

4. A law required a voter to strike out all names on the ballot except that one for whom he intended to vote. He then inadvertently struck out the first name of H. Upon asking a bystander, not an election officer, how to rectify the mistake, the latter, not otherwise interfering, told him that the only way would be to write "I vote for H. only," and he wrote these words on the ballot for him. It was held that the erasure of the first name of H. did not vitiate the vote for him; that as the act placed the services of the election officers at the

disposal of illiterates, but did not expressly forbid other persons to render assistance, the bystander's act was not unlawful, notwithstanding such a practice might materially interfere with the secrecy of the ballot, 5 Australian Jur. R. 135.

5. During the progress of voting a person, lawfully present, thought the ballot papers were not being properly marked, and the election officer, who had been putting his initials on the counterfoil and not on the ballot paper proper, "so placed that when the ballot is folded they can be seen without opening it," initialed about twelve of the ballot papers, but finding he was wrong, at the close of the poll, in good faith and with an anxious desire to do his duty, and in such a way as not to allow any person to see the front of the ballot paper, and with the assent of the legal agents of both the contestor and contestee, took these ballots out of the box and obliterated the marks he had put upon them. It was held that these irregularities not having infringed upon the secrecy of the ballot, and the ballots being unquestionably those given by the election officer to the voters, these ballots should be held good, and that such irregularities came within the saving provisions of a statute similar to § 4757, 8 Can. Sup. Ct. 676; Hodg. El. Cas. 519, 764.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4705*d*. Removal of stamps. 50. Any person who shall remove or attempt to remove a ballot or stamp from the election-room, or having in his possession outside the election-room any ballot or stamp, either genuine or counterfeit, during the election, shall be guilty of felony, and on conviction, shall be imprisoned in the penitentiary not less than two nor more than five years, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1372.]

This section applies to city and town elections. It has no corresponding section in the act of 1881.

Sec. 4705*e*. Counting ballots. 51. Immediately on closing the polls, the board shall count all the ballots remaining unvoted, record the number of the same on the tally-sheets, and destroy all of such ballots by totally consuming by fire. [El. Sup. § 1373.]

This section applies to city and town elections. It has no corresponding section in the act of 1881.

[1881, p. 482. Approved April 21, 1881, and in force September 19, 1881.]

Sec. 4706. Defective ballots. 28. If more persons are designated on any ticket to any office than are to be elected to such office, such part of the ticket shall not be counted to any of them; but no ticket shall be lost for want of form, if the board of judges can determine, to its satisfaction, the person voted for and the office intended: *Provided*, That no ballot shall be rejected by reason of any misarrangement of initial letters, or the mis-spelling of any christian or surname of any candidate, but, if the board is able to discover, to the satisfaction of a majority thereof, the person intended to be voted for, such ballot shall be counted.

This section applies to cities and towns. See §§ 4710 and 4710*j*.

Sec. 4707. Duty of board. 29. No inspector, clerk, or judge of any election shall vote after commencing to count the votes, nor publish any statement of the result of the counting until such election is closed.

This section applies to cities and towns.

Sec. 4708. Adjournments forbidden. 30. After the opening of the polls at any election in this State, no adjournment shall be had nor any recess taken until all the votes cast at such election shall have been counted, and the result publicly announced.

This section applies to cities and towns.

Sec. 4709. Meals for election officers. 31. It shall be the duty of the township trustees, in their respective townships, to cause the members of the election board in each township or precinct to be furnished with good, plain, and substantial meals, at the regular hours for meals, during the election day and until the count is finished, but no spirituous, vinous, or fermented liquors shall be furnished. Such trustees shall be allowed, and paid, by the county board the actual cost of such meals, in their next regular account.

1. This section applies to cities and towns; and the common council and board of trustees must provide meals for election officers in cities and towns.

2. The *county* must *reimburse* a township trustee for the expense incurred under this section, even if the election was only a township election, 107 Ind. 584.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4709*a*. Canvass of votes. 52. The board shall then proceed to canvass the votes, beginning first with the state ballots and completing them before proceeding with the local ballots, by laying each ballot upon the table in the order in which it is taken from the ballot box, and the inspector and the judge of the election, differing in politics from the inspector, shall view the ballots as the names of the persons voted for are read therefrom. In the canvass of the votes any ballot which is not endorsed with the initials of the poll clerks, as provided in this act, and any ballot which shall bear any distinguishing mark or mutilation shall be void and shall not be counted, and any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidates, shall not be counted as to the candidate or candidates affected thereby: *Provided, however*, That on protest of any member of the board such ballot, and all disputed ballots shall be preserved by the inspector, and at the close of the count placed with the seals of the ballot packages in paper bags, securely sealed, and so delivered to the clerk of the county with notification to him of the number of ballots so placed in such bags, and of the condition of the seals of the ballot packages. The poll clerk shall also record on the tally sheets, memoranda of such ballots and the condition of the seal of

the ballot packages, and in any contest of election such ballots and seals may be submitted in evidence. On completing the count and recording the same on the tally sheets, all the remaining ballots, except those marked, mutilated or otherwise defective, as in this section hereinbefore described, shall be destroyed by the election board by totally consuming by fire before adjournment, and thereupon the election board shall immediately make a memorandum of the total vote cast for each candidate and deliver a copy thereof to each member of such board. No person other than the members of the election board, poll clerks and election sheriffs, and United States supervisors, if any be appointed, shall be permitted in the election room during the election, except for the purpose of voting or during the canvass of the votes.

1. See § 4706. This section applies to cities and towns; and it has no corresponding section in the act of 1881. See § 4710.

2. In delivering a ballot to a voter, two were inadvertently torn from the block together, the official mark placed upon the back of the upper one only, and the voter's mark made on the face of the lower one. It was held that the absence of the official mark on the ballot marked by the voter did not vitiate it, 9 Queb. L. Rep. 20. See 13 Ct. of Sess. 877 (question raised but not decided). See § 4701*h*, *note* 2, L. R. 16 Q. B. Div. 739, S. C. 54 L. T. N. S. 289.

3. A voter's registry number (where there was a registry law in force) was erroneously placed on the face of a ballot by the clerk and was by him erased after the close of the polls. It was held that the ballot was valid, 8 Can. Supr. Ct. 676; but in England a ballot similarly marked was held void, because it enabled the voter to be identified, L. R. 10 C. P. 733; S. C. 30 L. T. R. N. S. 867; 44 L. J. C. P. 293; 32 L. T. 867.

4. An English statute provided as follows: "The voter will go into one of the compartments and with a pencil provided in the compartment place a cross on the right-hand side opposite the name of each candidate for whom he votes, thus X." Under this statute it was held that it was not necessary that this mark should be made with the *pencil* provided in the compartment or with a pencil at all. A mark made with ink or with a piece of burnt stick was just as good as a mark made with a pencil, 2 O'Malley & Hardcastle, 215, S. C. 1 Ct. of Sess. 925. In another case it was said: "This paper appears to have been very *faintly marked* with a pencil. It has been argued that the mark ought to be made with sufficient clearness and distinctness to enable any person to count the votes easily and to recognize the mark with facility, but I do not find anything either in the Ballot Act or the rules which make it imperative for the voter to make a cross of sufficient thickness to make it easily recognizable by a person of weak sight. I have therefore come to the conclusion that the mark is sufficient because it is capable of being recognized as a mark, and I am of opinion that this vote ought to have been allowed," 3 O'Malley & Hardcastle, p. 181; S. C. 44 L. T. N. S. 289.

5. Under the statute just quoted the following ballot was counted for John McLaren, viz.:

1	HOME. (DAVID MILNE HOME, of Paxton House, in the shire of Berwick, in Scotland, a captain in the Royal Regiment of Horse Guards.)	
2	McLAREN. (JOHN McLAREN, of 46 Moray Place, Edinburgh, Lord Advocate for Scotland.)	X

It thus appears that the ballot was marked with a long cross, one part of which extended into the space opposite the name of Home, although the actual intersection of the cross was in the space opposite McLaren's name. Concerning this cross the court said: "If you strike out the upper part of the cross, that is, the part opposite the name of the respondent, you still have got a perfect cross opposite the petitioner's name. On the other hand, if you strike off what is opposite to petitioner's [McLaren's] name you will have no cross at all." The court therefore held that the vote must be counted for McLaren, 3 O'Malley & Hardcastle 178, S. C. 44 L. T. N. S. 289.

The following ballot, in the same case, was not counted, because it was not sufficiently marked:

×

BALLOT PAPER.

1	HOME. (DAVID MILNE HOME, of Paxton House, in the shire of Berwick, in Scotland, a captain in the Royal Regiment of Horse Guards.)	
2	McLAREN. (JOHN McLAREN, of 46 Moray Place, Edinburgh, Lord Advocate for Scotland.)	

It was deemed void for uncertainty as to the person voted for.

6. The ballot must not be marked, under the English statute quoted above, so as to show that the voter intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he voted. If these requirements are not substantially fulfilled the ballot is void and should not be counted; and if it is counted, it should be struck out in a contest. These remarks are also applicable to the Indiana law, L. R. 10 C. P. 733, S. C. 30 L. T. N. S. 867, 44 L. J. C. P. 293.

7. Notwithstanding the remarks made above, it was held in the same case in which they were made that while a ballot with the name of the voter or of the candidate voted for written opposite to the name of the latter and not marked with a cross, or with the addition of "*cu*" to the cross, should be held void. Yet the placing of two crosses, or three crosses, or a single stroke (thus, /) in lieu of a cross, or a straight line (thus, |) or a mark like an imperfect letter P in addition to the cross, or a star instead of a cross, or a cross blurred or marked with a tremulous hand, or a cross placed on the left-hand side of the ballot paper, or a pencil line drawn through the name of the candidate not voted for, or a ballot paper torn longitudinally through the center, was not a void vote, in the absence of evidence of connivance or pre-arrangement. When this decision was rendered there was in force a statute which provided that any ballot so marked that "the votes can be identified, shall be void and not counted." After quoting several provisions of the statute the court said: "The result seems to be, as to writing or mark on the ballot paper, that, if there be substantially a want of any mark, or a mark which leaves it uncertain whether the voter intended to vote at all or for which candidate he intended to vote, or if there be marks indicating that the voter has voted for too many candidates, or a writing or a mark by which the votes can be identified, then the ballot paper is void, and is not to be counted; or, to put the matter affirmatively, the paper

must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted. If these requirements are substantially fulfilled, then there is no enactment and no rule of law by which a ballot paper can be treated as void, though the other directions in the statute are not strictly obeyed. If these requirements are not substantially fulfilled the ballot paper is void, and should not be counted; and if it is counted, it should be struck out on scrutiny. The decision in each case is upon a point of fact, to be decided first by the returning officer, and afterwards by the election tribunal, on petition." The court then holds a certain ballot void because of a mark upon it by which, "or reference to the burgers'-roll, the way in which the voter had voted could be identified." Of two others it was said: "There is no cross at all; and we yield to the suggestion made that the writing by the voter of the name of the candidate may give too much facility, by reason of the handwriting, to indentify the votes. But we can not think that the mere fact of two crosses being placed" on a ballot "ought to vitiate the ballot paper. There can be no doubt as to the intention to vote, and no doubt as to the intention to vote emphatically for the one candidate. If there were evidence of an arrangement that the voter would place two marks, so as to indicate that it was he, that voter, who had used that ballot paper, then, by reason of such evidence, such double mark would be a mark by which the votes could be identified, and then the paper, upon such proof being made, would be rejected. But the mere fact of there being two such crosses is not in our judgment a substantial breach of the statute. Neither is the mere fact of an additional mark," "nor the mere fact of the peculiar forms of cross," in certain ballots, nor three crosses, nor a straight stroke in addition to the cross, nor a ballot marked with the letter P, nor a ballot with a pencil line through the candidate not voted for with a cross opposite the one voted for, "though in these cases also extensive evidence of arrangement might make such peculiarities indications of identity." A ballot marked with an oblique line, instead of a cross, was counted; and so were ballots on which the cross was placed on the left instead of the right hand, because "inasmuch as the ballot was handed in by the voter, the mark substantially indicates that the voter intended to vote for the candidate against whose name it is placed;" and because the "substance of the direction" of the statute "is fulfilled, which is in our opinion that the voter should clearly indicate the candidate for whom he intends to vote. If this be done substantially, and the absolute enactment as to secrecy be observed fully, we think the statute is satisfied," L. R. 10 C. P. 733, S. C. 30 L. T. N. S. 867, 44 L. J. C. P. 293. Upon these points the case disapproves 2 O'Malley & Hardcastle, 215, S. C. 1 Ct. of Sess. (4 series) 925, where it was said that using, instead of the cross, "a circle, or an oval, or any other geometrical or anomalous figure, would not be a compliance with the law, independently of the consideration that such a plain and willful departure from what was intended would suggest strongly the suspicion that some sinister purpose was intended," and an oblique straight line held to render the ballot void.

8. In another case the marks of the ballots contested were placed in the square or compartment where the candidate's name was printed. Thus, taking the example given in note 5, the cross was placed, say, in the same compartment as the word "Home." This was held to make the ballot a valid vote for the person whose name was in the square; as, *e. g.*, for Home, 2 O'Malley & Hardcastle, 186, S. C. 8 Ir. C. L, 240. The statute in this case directed that "the voter * * * shall place a cross on the right-hand side opposite the name of each candidate for whom he votes."

9. In another case ballots were objected to on the ground that they contained marks separate from the cross, or badly formed crosses. To this the court said: "These are matters that run into each other so much so that it is impossible to lay down any clear and broad principle, and I think I must follow the maxim, 'De minimis non curat Praetor' (the judge regards not mere trifles). I am not disposed to disqualify a voter for a trifling thing such as a

spot or a dot on his voting paper. No. 1089 has the appearance of a speck or dot; but I shall hold it to be a good vote. Nor is mere clumsiness sufficient to disqualify. Further, there may be vacillation to a certain extent in the hand, and the voter may go back on one leg of his cross to make it more complete, and so to give it the appearance of a double stroke; but I can not disqualify on that ground unless I see so much deviation from what an ordinary and rather rough writer would be able to do. No. 534 has a thick and clumsy line; but it appears to me to be nothing more than a blunder in the mode of forming the cross," 2 O'Malley & Hardcastle, 232.

10. In Canada a statute required the voter to make "a cross with a pencil on any part of the ballot-paper within the division (or if there be more than one to be elected, within the divisions) containing the name (or names) of the candidate (or candidates) for whom he intends to vote, and shall then fold up such ballot paper so that the initials on the back can be seen without opening it," etc. The following ballot papers were cast, marked as designated.

I	BRECKEN. Frederick de Saint Croix Brecken, of Charlottetown. X
II	DAVIES. Louis Henry Davies, of Charlottetown.

This was considered a vote each for Brecken and Davies.

I	BRECKEN. Frederick de Saint Croix Brecken, of Charlottetown. X
II	DAVIES. Louis Henry Davies, of Charlottetown.
III	JENKINS. John Theophilus Jenkins, of Charlottetown. X

First cross allowed for Brecken; second disallowed.

III	JENKINS. John Theophilus Jenkins, of Charlottetown. X
IV	LAIRD. David Laird, of Charlottetown. +

These were deemed valid votes.

I	BRECKEN. Frederick de Saint Croix Brecken, of Charlottetown.	
II	DAVIES. Louis Henry Davies, of Charlottetown.	X
III	JENKINS. John Theophilus Jenkins, of Charlottetown.	×

These votes were allowed respectively for Brecken, Davies and Jenkins.

II	DAVIES, Louis Henry Davies, of Charlottetown.	X
III	JENKINS. John Theophilus Jenkins, of Charlottetown.	X

Neither of these votes were allowed. So a ballot with the cross (×) on the back corresponding with the division of the person claiming it was a vote for him was disallowed, 7 Can. Supr. Rep. 247.

11. More than one cross, under this statute, is no objection, or even an inverted V, or the fact that the cross is not directly opposite the name of the candidate, if there are only two names on the ballot paper and a line is drawn dividing the paper in the middle. It was said that whenever the mark evidenced an attempt to make a cross, though the cross may be in some respects imperfect, the ballot should be counted, unless from the peculiarity of the mark made it can be reasonably inferred that there was not an honest design simply to make a cross, but that there was also an intention so to mark the paper that it could be identified, in which case the ballot should be rejected. But if the mark made indicates no design of complying with the law, but on the contrary a clear intent not to mark with a cross as the law directs; as, for instance, by making a straight line or round O, then such non-compliance with the law renders the ballot null, 8 Can. Supr. Ct. 676. With reference to a straight mark, it will be perceived this case differs from the English case quoted above. So in another case it was held that ballots with a cross to the right just after the candidates name, but in the same column and not in the column on the right-hand side of the name; or with an ill-formed cross, or with small lines at the ends of the cross, or with a line across the center or one of the limbs of the cross, or with a curved line like the blades of an anchor, were valid. But ballots with a single stroke; or with the candidates name written thereon in addition to the cross; or with marks in addition to the cross, by which the voter might be identified, although not put there by the voter in order that he might be identified; or marked with a number of lines, or with a cross for each candidate for the same office, were void, Hodgins El. Cas. 671; S. C. 11 U. C. Law Jour. 163; 10 Commons Law Journal, 1876, p. 24. Affirmed, 37 Q. B. (Canada) 234. To same effect, 20 L. C. Jur. 22; 12 L. C. Jr. 113; Hodgins El. Cas. 725.

12. Crosses to the left of the name is not a sufficient marking, 12 L. C. Jr. 113; 20 L. C. Jur. 22. So a straight mark or a cross on the back is insufficient, as previously remarked. Hodgins El. Cas. 531. But a cross in ink, with a du-

plicate blotted cross in the next candidate's square, made by folding the ballots before dry, is valid, 1 Australian Jur. R. 150; 12 Can. L. Jour. 113.

12*a*. In Canada, if the cross is not unmistakably above or below the line separating the names of the candidates, the ballot is bad, Haldimand *vs.* Walsh, 15 Can. Sup. Ct. 495. See Regina *vs.* Ferguson, 10 Can. L. T. 98. The statute of Connecticut provides that "in addition to the official indorsement, the ballots shall contain only the names of the candidates, the office voted for, and the name of the political party issuing the same." It was held that the validity of the ballots was not affected by the presence or absence of the word "for" before the office voted for, and, where all the ballots used by a party either contain or omit the words, the validity thereof is not affected by the provisions of the act, that, if any ballot "shall contain any mark or device, so that the same may be identified in such manner as to indicate who may have cast the same, it shall not be counted." The statute also provides that "in addition to the official indorsement, the ballots shall contain only the names of the candidates, the office voted for, and the name of the political party issuing the same," and declared that a failure to comply with which renders the ballot void. It was held that the presence on the ballot of a name for an office which could not be filled at the election rendered it void, as also the addition to the words "For Town Clerk" of the words "and *ex officio* Registrar of Births, Marriages, and Deaths," that being no part of his title, but an expression of his authority under the general statutes, Fields *vs.* Osborne, 21 Atl. Rep. 1070. See Talcott *vs.* Philbrick, 20 Atl. Rep. 436.

RULES FOR COUNTING BALLOTS.

13. The following rules will be found convenient in counting the ballots:

(*a*.) If a ballot is wholly unstamped it can not be counted at all.

(*b*.) If a ballot is not stamped in the square at the top of the title head of either ticket it shall then be counted only for the individual to the left of whose name the square has been stamped.

(*c*.) If *all* or *more than one* of the squares at the top of the several party titles are stamped the ballot must be treated as if no title was stamped, and it can not be counted for the individuals, if any, to the left of whose names the square has been stamped.

(*d*.) If the squares in front of the names of two or more candidates for the same office are stamped the ticket must not be counted, for it is void.

(*e*.) If the square at the top of the title of any one ticket shall have been stamped, then all the names under that title shall be counted.

(*f*.) If the large square is stamped, a stamp elsewhere on the ballot makes it void. A stamp that touches a square must be counted on that square; but a stamp that touches no square makes the ballot void.

(*g*.) To the above rule there is one exception, and only one exception: If there should be no candidate for one or more offices under a large square thus stamped, it is permissible to stamp in front of the name of a candidate on some other ticket for such office, but no other.

(*h*.) If the square at the top has been stamped, and also each or any name under it, the ticket can not be counted, for it is void.

(*i*.) If the title of a ticket is stamped, and no names under that title stamped, but names under other unstamped titles *are stamped*, then the ticket is void.

(*j*.) If any ticket is found not indorsed with the initials of the poll clerks, or if any ticket bears any distinguishing mark or mutilation, it shall not be counted; so, if any ticket properly indorsed, and not mutilated, is so made up that it is impossible to determine from the ballot the elector's choice of candidates, such ballots shall not be counted as to the candidate or candidates affected thereby, but should be counted as to the candidates not thereby affected.

(*k*.) In making the count, if any member of the board shall protest or object to the decision of a majority thereof as to counting or not counting the ticket,

such ballots must be preserved by the inspector, and the poll clerks must record on the tally sheets a memorandum, stating how the tickets were stamped and counted, describing them for identification.

(*l*.) *A protest does not, in any sense, mean that the ballot shall not be counted. It must be counted, notwithstanding the protest, if a majority of the board so decide, and the only persons to decide are the inspector and two judges.*

(*m*.) The United States supervisor has absolutely nothing to do concerning the counting of the state tickets. His only duty is with reference to the local ballots on which is printed the names of the candidates for congress or for presidential electors. As to these, he is required to keep a record of all irregularities on blanks furnished, with instructions by chief supervisor.

[1885, p. 153. Approved April 8, 1885, and in force June 18, 1885.]

Sec. 4710. Manner of counting votes. 32. When the polls are closed, the inspector and judges shall open the ballot-box, and commence counting the votes; when the ballots shall be taken out carefully, one by one, by the inspector, who shall open them as he takes them out, and read aloud the name of each person printed or written thereon, and the office for which every such person is voted; and the judge of elections of opposite politics from such inspector, shall have the right of inspecting and looking over such ballot during the time such inspector reads the same aloud, and may call attention to any mistake in such reading aloud. Such inspector shall then hand the ballot to such judge, who shall examine the same, and hand it to the other judge, who shall string it on a thread of twine. [El. Sup. § 1322.]

This and § 4709*a* must be construed together. No name however written or stamped on a ballot can now be counted. Pasters can only be used under § 4701*a*; and if used, unless in accordance with the provisions of that section, the ballot will not be counted. Construed, 61 Ind. p. 422.

[1889, p. 157. Approved March 6, 1889, and in force May 10, 1889.]

Sec. 4710*a*. Destruction of election papers. 53. Any person who shall (1) falsely make or fraudulently deface or fraudulently destroy any certificate or petition of nomination, or any part thereof; (2) file any certificate or petition of nomination, knowing the same, or any part thereof, to be falsely made; or (3) suppress any petition or certificate of nomination which has been duly filed, or any part thereof; or (4) forge or falsely make the official indorsement of any ballot; or (5) print, or cause to be printed, any imitation ballot, or circulate the same; or (6) conspire with others to do any of said acts, or induce, or attempt to induce, any other person to do any of said acts, whether or not said acts, or any of them, be committed, or attempted to be committed, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary not less than two nor more than five years, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1375.]

This section applies to city and town elections. It has no corresponding section in the act of 1881.

Sec. 4710*b*. Opening or destroying ballots. 54. Any clerk, inspector or other messenger entrusted with the custody of ballots who shall open any of the packages in which the ballots are contained, or permit any of them to be opened, or destroy any of such ballots, or permit them to be destroyed; or give or deliver any such packages or ballots to any person not lawfully entitled to receive them, as herein provided; or conspire to procure, or in any way aid, abet or connive at any robbery, loss or destruction of any such ballots or packages, shall be guilty of a felony, and on conviction shall be punished by imprisonment in the state prison for not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1376.]

This section applies to city and town elections. It has no corresponding section in the act of 1881.

Sec. 4710*c*. Unlawfully entering election room. 55. If any person not herein authorized so to do shall enter or attempt to enter the election room, or enter or attempt to enter within the railing leading from the challenge window to the entrance of the election room without first having been passed by the challengers, or having been sworn in as hereinbefore provided, or shall remain within fifty feet of the polling place, contrary to the provisions hereinbefore made, he shall be guilty of a misdemeanor, and on conviction thereof be fined not more than five hundred dollars. [El. Sup. § 1377.]

This section applies to city and town elections. It has no corresponding section in the act of 1881. See § 4711.

Sec. 4710*d*. Inducing elector how to mark his ballot. 56. If any person shall induce, or attempt to induce, any elector to write, paste, or otherwise place on his ballot the name of any person or any sign or device of any kind as a distinguishing mark by which to indicate to any other person how such elector has voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce electors, or any elector, to so place any distinguishing name or mark on his ballot, whether or not said act be committed or attempted to be committed, such person so offending shall be guilty of felony, and, on conviction, be imprisoned not more than five nor less than two years in the State's prison. [El. Sup. § 1378.]

This section applies to cities and towns. It has no corresponding section in the act of 1881.

Sec. 4710*e*. Revealing how elector voted. 57. If any person, being a member of an election board or otherwise entitled to [the] inspection of the ballots, shall reveal to any other person how any elector has voted, or what other candidates were voted for on any ballot bearing a name not printed thereon by the board of election

commissioners, or give any information concerning the appearance of any ballot voted, such persons so offending shall be guilty of a felony, and, on conviction, shall be imprisoned not less than two years nor more than five years in the State's prison, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1379.]

1. This section applies to city and town elections. It has no corresponding section in the act of 1881. See § 4710*h*.

2. Inadvertently giving information how an elector voted is as much an offense as giving it deliberately. The statement of the voter how he voted, uncontradicted, is a sufficient evidence of the charge that he did so vote, in an action against one giving information as to how such elector voted, 8 Ir. C. L. 50. Leaving a paper in the election room, which shows how an elector voted, is no offense, unless some one read the paper, 4 C. P. Div. 191, S. C. 48 L. J. M. C. 89; 40 L. T. 589; 27 W. R. 620.

Sec. 4710*f*. Inducing member of election board to violate preceding section. 58. If any person shall induce or attempt to induce any member of an election board to violate any of the provisions of section 47 [57], [§ 4710*e*] whether or not such member of the election board shall violate or attempt to violate any of the provisions of this act, such person so offending shall be guilty of a felony, and, on conviction, shall be imprisoned in the State's prison not less than two years nor more than five years, and be disfranchised for any determinate period not less than ten years. It shall be the duty of each inspector to distinctly read this and the preceding section to the election board at the opening of the polls, and each member thereof shall thereupon take an oath that he has not violated and will not violate the provisions of said section. [El. Sup. § 1380.]

This section applies to city and town elections. It has no section corresponding to it in the act of 1881.

Sec. 4710*g*. Removing or destroying cards, etc. 59. Any person who shall, during the election, remove or destroy any of the supplies or other conveniences placed in the booths as aforesaid or delivered to the voter for the purpose of enabling the voter to prepare his ballot, or shall, during an election, remove, tear down or deface the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booth, railing or other convenience provided for such election, or shall induce or attempt to induce any person to commit any of such acts, whether or not any of such acts are committed or attempted to be committed, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than six months nor more than one year and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1381.]

This section applies to cities and towns. It has no corresponding section in the act of 1881.

SEC. 4710*h*. **Electioneering.** 60. No officer of election shall disclose to any person the name of any candidate for whom any elector has voted. No officer of election shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling place, or within fifty feet of any polling place. No person shall apply for or receive any ballot in any polling place other than that in which he is entitled to vote. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate or candidates for whom he has marked his vote; nor shall any person examine a ballot which any elector has prepared for voting or solicit the elector to show the same. No person except the inspector of election, or judge who may be temporarily acting for him, shall receive from any voter a ballot prepared by him for voting. No person shall receive a ballot from any person other than one of the poll clerks; nor shall any person other than a poll clerk deliver a ballot to an inspector to be voted. No voter shall deliver any ballot to an inspector to be voted, except the one he receives from the poll clerk. No voter shall place any mark upon his ballot or suffer or permit any other person to do so, by which it may be afterward identified as the one voted by him. Whoever shall violate any provision of this section shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment for not less than six months nor more than one year, and by fine of not less than one hundred dollars nor more than five hundred dollars, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1382.]

This section applies to city and town elections. It has no corresponding section in the act of 1881. See § 4710*e*.

SEC. 4710*i*. **Officer neglecting duty.** 61. Any public officer, upon whom any duty is imposed by this act, who shall willfully neglect or omit to perform such duties, or do any act prohibited herein, for which punishment is not otherwise herein provided, shall be deemed guilty of a felony, and, on conviction, shall be punished by imprisonment in the State's prison for not less than six months nor more than three years, or by a fine of not more than three thousand dollars, or by both such fine and imprisonment, and be disfranchised for any determinate period not less than ten years. [El. Sup. § 1383.]

This section applies to cities and towns. It has no corresponding section in the act of 1881.

SEC. 4710*j*. **Constitutional amendments.** 62. Whenever any constitutional amendment or other question is required by law to be submitted to popular vote, if all the electors of the State are entitled to vote on such question, the state board of election commissioners shall cause a brief statement of the same to be printed on the state

ballots, and the words "yes" and "no" under the same, so that the elector may indicate his preference by stamping at the place designated in front of either word. If the question is required by law to be voted on by the electors of any district or division of the State the board or boards of election commissioners of the county or counties, including or included in such division or district, shall cause similar provision to be made on the local ballots. In case any elector shall not indicate his preference by stamping in front of either word the ballot as to such question shall be void and shall not be counted. [El. Sup. § 1384.]

This section applies to cities and towns, especially on a vote for water-works, § 3265. It has no corresponding section in the act of 1881. See § 4706.

Sec. 4710*k*. Disposition of affidavits. 63. All affidavits provided in this act to be used on the day of election at the several polling places shall, at the close of the count, be placed in a strong paper bag, or envelope, by the election board and securely sealed by them, each member indorsing his name on the back of such bag or envelope. Such bag or envelope shall be delivered within three days after the election, by the inspector, to the clerk of the circuit court of the county, whose duty it shall be to carefully preserve the same, and deliver it, with the seal unbroken, to the foreman of the grand jury when next in session. It shall be the duty of such grand jury to inquire into the truth or falsity of such affidavits. [El. Sup. § 1385.]

This section applies to cities and towns, the city and town clerk's office being the place of deposit. It has no corresponding section in the act of 1881.

Sec. 4710*l*. County and township election. 64. When any township or county holds an election at a time other than the time of a general election, such election shall be held in conformity with the provisions of this act, and all county and local officers who are required to perform any duties in connection with the general election shall perform the same duties in connection with such special or local election, subject to the same provisions and penalties herein prescribed in case of general elections. [El. Sup. § 1386.]

This section applies to special elections in cities and towns. Its corresponding section in the act of 1881 is § 4734.

[1891, p. 124. Approved March 6, 1891, and in force June 3, 1891.]

Sec. 4710*m*. City and town elections. 65. Where any town or city shall hold an election at any time other than a time of a general election, such election shall be held in conformity with the provisions of this act, except the duties herein required of the county clerk shall be performed by the town or city clerk; the duties herein required of the board of county commissioners shall be performed by the town trustees or city council; the duties of the county sheriff shall be performed by the town marshal or chief of

police, and the rights of nomination of election officers by political parties shall be exercised by the chairman of the town or city committees of such parties, if any such there be. Town and city officers are hereby required to perform the various duties herein prescribed for the county officers in whose stead they act, subject to the same penalties and provisions herein prescribed as to such county officers. The town and city boards of election commissioners shall provide the necessary stamps and ink pads for such elections, and shall cause as many classes of ballots to be printed as there are wards or districts entitled to separate officers, ballots of each class having printed uniformly on the back of the same, the name or number of the ward or district in which it is to be used, and containing the names of all lawfully nominated candidates for all offices that the voters of such ward or district are entitled to vote for at such election. The commissioners of county and trustees of townships in which such towns or cities are situated shall furnish what is necessary for use in such elections of the election furniture in their custody: *Provided*, That such town or city shall pay the expense of moving such furniture to and from the polling places, and also for any damage to, or loss of such furniture. The boards of town or city election commissioners shall perform all the duties in providing and preparing polling places that are required of county commissioners in county elections, subject to the same provisions and penalties.

A section quite similar to this, and even now in force, is section 60 of the act of 1881, being § 3224. See also § 3045, in case of cities, and § 3307, in case of towns.

[1889, p. 425. Approved March 11, 1889, and in force May 10, 1889.]

Sec. 4710*n*. Legal holidays. 66. All election days shall be legal holidays throughout the district or municipality in which the election is held.

This section has no corresponding section in the act of 1881.

Sec. 4710*o*. Laws repealed—Saving clause. 67. All laws and parts of laws inconsistent with the provisions of this act are hereby repealed, *pro tanto: Provided, however*, That nothing in this act contained shall impair the effect of any such act as to any offense heretofore committed under existing laws: *And, provided further*, That the provisions of this act shall not apply to any election to be held prior to the first Monday in June, 1890, and all elections to be held prior to said date of the first Monday of June, 1890, shall be held and conducted under the provisions of the laws now in force, and all elections to be held after the first Monday in June, 1890, shall be provided for and held under the provisions of this act.

This section repeals all election laws generally or especially applying to cities or towns in so far as the election law of 1889 (of which the above section is a part) is in conflict with them.

[1881, p. 482. Approved April 21, 1881, and in force September 19, 1881.]

Sec. 4711. Witnesses to counting—Misdemeanor. 33. Any political party having candidates or a candidate to be voted for at any election may be represented by two qualified voters of such precinct in the room where the votes are counted, who may witness the counting of the votes and remonstrate against any fraud or irregularity that may occur: *Provided*, That such persons shall conduct themselves in a quiet and orderly manner, and shall not interrupt the board in the discharge of its official duties, except to state and file such protest. Said persons may be selected by the central committee of the county or township in which such precinct is located, or by the candidates to be voted for or a majority of them, or by the voters of the respective parties then present: *Provided*, That no person shall be admitted to the room where the election board is sitting, save only the members of the board, the sworn clerks, and the witnesses herein provided for: *And provided, further*, That such witnesses shall enter the protests provided for herein in writing, and they shall be kept by the inspector and returned with the election returns and papers to the clerk's office, as provided in this act: *And provided, further*, That if the members of such election board, or any of them, shall, at any time during the progress of such election, refuse admittance to their room to any such witnesses, selected as provided for in this act, the person so offending shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined therefor, by the proper court or jury trying the cause, in any sum not less than five dollars nor more than fifty dollars.

1. This section is in force, notwithstanding § 4710*c*; and applies to cities and towns.

2. At an election for which a congressman is voted for, United States supervisors are entitled to be present from the opening of the polls until the certificates of election are completed and signed.

Sec. 4712. Certificate of judges. 34. When the votes shall be counted, the board of judges shall make out a certificate, under their hands, stating the number of votes each person has received, and designating the office; which number shall be written in words; and such certificate, together with one of the lists of voters and one of the tally-papers, shall be deposited with the inspector, or with one of the judges selected by the board of judges.

This and § 3047, in case of cities, and § 3309, in case of towns, must be construed together.

Sec. 4713. Care of ballots and papers. 35. As soon as the votes are counted, and before the certificate of the judges, as prescribed in the foregoing section, is made out, the ballots, with one of the lists of voters and one of the tally-papers, shall, in the presence of the judges and clerks, be carefully and securely placed by the inspector, in the presence of the judges, in a strong and stout paper envelope or bag, which shall then be tightly closed and well sealed

with wax by the inspector, and shall be delivered by such inspector to the county clerk at the very earliest possible period before or on the Thursday next succeeding said election; and the inspector shall securely keep said envelope containing the ballots and papers therein, and permit no one to open said envelope or touch or tamper with said ballots or papers therein. And upon the delivery of such envelope to the clerk, said inspector shall take and subscribe an oath, before said clerk, that he has securely kept said envelope and the ballots and papers therein, and that, after said envelope had been closed and sealed by him in the presence of the judges and clerks, he had not suffered or permitted any person to break the seal or open said envelope, or touch or tamper with said ballots or papers, and that no person has broken such seal or opened said envelope to his knowledge; which oath shall be filed in said clerk's office with the other election papers.

This section is now modified by § 4705*e;* and all ballots, except disputed ones, are now destroyed; but such disputed ballots are sealed and delivered to the county clerk, 61 Ind. 422. All of this section, with this exception, seems to be in force. This section applies to cities and towns. See 4709*a*.

Sec. 4714. Clerk's and trustee's duties. 36. The clerk shall securely keep said envelope, so sealed, with the ballots and papers therein, in the same condition as it was received by him from the inspector, in his office (unless opened by said inspector, in the presence of the board of canvassers, as herein provided), for the period of six months. But when such election is contested, he shall preserve them so long as such contest is undetermined, subject to the order of the court trying such contest: *Provided,* That said inspector shall, after sealing said envelope containing such ballots and one of his poll-books and tally-papers, plainly mark said envelope upon the outside, in ink, with the name, number, and township. And after each election the ballot-box herein provided for shall be, by said inspector, deposited with the township trustee of the township in which his precinct is situate, for safe-keeping. And said officers of election shall, upon receiving the pay for their services as such from said township trustee, deliver to him the keys to said ballot-box in their custody.

1. This section applies to cities and towns, and is slightly modified by § 4709*a*. See § 4713, *note*.

2. In state, county and township elections, where the inspector of a precinct is not a trustee, such inspector pays the officers of election. In the case of a city or town the inspector procures the money, after an allowance by the council or board of town trustees, from the city or town treasurer, and pays them.

Sec. 4715. Board of canvassers. 37. The inspectors of each township or precinct, or the judges of election to whom the certificates, poll-books, and tally-papers shall have been delivered, as provided for in this act, shall constitute a board of canvassers, who shall canvass and estimate the certificates, poll-lists, and tally-papers

returned by each member of said board; for which purpose they shall assemble at the court-house on the Thursday next succeeding such election, between the hours of ten A. M. and six o'clock P. M.

1. The inspectors of *city elections*, in the canvass of votes to ascertain the persons chosen at a city election, are officers, and together constitute a board, 39 Ind. 488. The same is true of town inspectors, where there is more than one voting precinct in the town. The inspectors of the several precincts constitute the board of canvassers.

2. Where there is only a *township election* the inspectors of the precinct constitute the board, and if there is only one precinct, any two of the judges of that precinct may declare the result immediately after it is ascertained, or they may meet on the following Thursday and make out the certificates. The fact that they call in the county auditor, or any other person, to aid them does not vitiate the result, 69 Ind. 324.

Sec. 4716. Officers of board. 38. The members of such board who shall assemble at such time and place shall select one of their number as chairman, and the clerk of the circuit court shall act as their clerk.

The clerk of the circuit court is *ex officio* clerk of the election board of the county, 2 Ind. 423.

Sec. 4717. Duties of board. 39. Such board, when organized, shall carefully compare and examine the papers intrusted to it, and aggregate and tabulate from them the vote of the county; a statement of which shall be drawn up by the clerk, and shall contain the names of the persons voted for, the office, the number of votes given in each township and precinct to each person, the number of votes given to each in the county, and also the aggregate number of votes given; which statement shall be signed by each member of said board; which canvass-sheet, together with such certificates, poll-books, and tally-papers shall be delivered to the clerk, and by him filed in his office. The same shall be preserved by him, open to the inspection of any legal voter of the county, or district, or State.

The board of canvassers acts ministerially; and if they unlawfully fail to perform their duty, or perform it in an unlawful manner, whereby a person is injured, they are liable, and the complaint therefor need not allege that they acted maliciously, purposely or by mistake, 59 Ind. 152.

Sec. 4718. Certificate. 40. Such board shall declare the person having the highest number of votes given for any office to be filled by the voters of a single county duly elected to such office, and certify the same in the statement above required.

1. The statement and declaration of the result of a general election, made by the board of canvassers, are, at the most, merely *prima facie* evidence of the result, 61 Ind. 392; 101 Ind. 36.

2. But in a proceeding by information to oust an incumbent of an office holding over after the expiration of his term, in favor of another holding a certificate of election as successor of the former, the defendant can not attack such certificate by showing that the said holder was not elected to such office, and that a third person was elected, 102 Ind. 90.

Sec. 4719. Tie-vote. 41. If two or more persons shall have the highest and an equal number of votes for a single office to be filled by the voters of a single county, such board shall forthwith declare that no person is elected to fill such office, and shall certify the same in its statement; and, when filed, the clerk shall certify that fact to the tribunal whose duty it is to supply vacancies in such office or to issue a writ of election to fill the same, as the case may require.

1. In view of the fact that all elections must be by ballot, as declared by the constitution, it has been questioned whether this section is valid; for when two candidates have the highest and equal number of votes, neither is elected it is said, and to permit the selection of one by lot is the election of a person to an office without the use of the ballot. But it has been decided that such a determination of the matter is a valid determination, 27 N. E. Rep. 422.

2. A township trustee was a candidate for re-election, and he and his opponent received an equal number of votes. The trustee refused to discharge the duties required of him in a case of a tie, and continued to act as township trustee. This action was held not to create a vacancy, and the county auditor, therefore, had no power to fill the office by appointing a trustee, as in case of a vacancy, 46 Ind. 307.

Sec. 4720. Defective papers—Duty of board. 42. No tally-paper, poll-book, or certificate returned from any election by the board of judges thereof, shall be rejected for want of form nor for lack of being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood; and such board of canvassers shall, in no case, reject the returns from any precinct if the same be certified by the board of election of that precinct, as required by law, and presented to them by the inspector or one of the judges of said board.

1. The acts of canvassers are ministerial; and if they unlawfully fail to perform their duty, or perform it in an unlawful manner, whereby a person is injured, they are liable, 59 Ind. 152.

2. It is improper for the board to hear evidence touching irregularities at the election. The face of the tally-papers, and the certificate made by the inspectors, judges, and clerks, are its guide, 59 Ind. 152.

3. When the returns fail to state what office parties named are voted for they are void for uncertainty, and the canvassers should reject them, 59 Ind. 152.

4. The statement and declaration of the result of a general election, made by the board of canvassers, are, at most, merely *prima facie* evidence of the result, 61 Ind. 392.

5. They can not consider any question relative to the validity of the election held; they can only cast up the votes given for each person from the proper election documents, and declare the person who, upon the face of such documents, appears to have received the highest number of votes given, duly elected to the office for which the votes were cast, 2 Ind. 423; 39 Ind. 488.

Sec. 4721. Certificate of election. 43. Where any person is elected to an office by the voters of a county not to be commissioned by the governor, the clerk of the circuit court shall, after ten days from the time the board of canvassers has made its return, make out and deliver, on demand, to such person, a certificate of his election; and in case where any officer is to be com-

missioned by the governor, he shall make out a statement, under his hand and the seal of his court, specifying the number of votes given to each person for each office, and who has been declared elected, and shall transmit the same, by mail, to the secretary of state, within the time aforesaid.

1. *Mandamus* lies to compel election inspectors to give a certificate of election to the person who, upon the face of the proper election documents, appears to have received the highest number of votes given, 39 Ind. 488.

2. *A commission* is not necessary to the right to exercise the duties of the office to which a successful candidate has been chosen, 20 Ind. 1; 21 Ind. 516; 33 Ind. 391; 26 N. E. Rep. 866. The person elected is entitled to the office at the commencement of his term, notwithstanding a contest of such election may be pending; and a commission issued to him after the termination of the contest should be made for the term for which he was elected, commencing, not at the date of the contest, but at the date at which he was entitled to the possession of the office, 33 Ind. 391, R. S. 1881, § 1136; 64 Ind. 189; 61 Ind. 379; 101 Ind. 36.

Sec. 4722. Defective returns—Commissions. 44. No commission shall be withheld by the governor on account of any defect or informality in the return of any election to the office of the secretary of state, if it can, with reasonable certainty, be ascertained from such return what office is intended and who is entitled to such commission.

Sec. 4723. Certificate of votes for legislators. 45. When two or more counties compose a district to elect a senator or representative, the clerks of the circuit courts of such counties, on the day next succeeding the return-day of such election, shall make out a certificate of votes received by each individual for senator or representative, and deliver the same to the sheriff.

Sec. 4724. Certificate of election of legislators. 46. Such sheriffs shall meet on the Wednesday next following the return-day of such election, between the hours of one and six of the afternoon, at the court-house of the oldest county in such district, where they shall compare the certificates delivered to them by the clerks, and shall jointly make out and transmit to the person having the highest number of votes for senator or representative a certificate of his election. The county first organized (or, if two or more were organized at the same session, then the county having, by the auditor of state's last report, the highest number of taxable polls) shall be deemed the oldest.

Sec. 4725. Tie-vote for legislators. 47. If, in such case, any two or more persons shall have the highest and an equal number of votes for the same office, such sheriffs shall certify that fact to the clerk of the circuit court of the county in which such sheriffs shall have compared such votes, and such clerk shall forthwith certify the same to the governor.

Sec. 4726. Certificate to secretary of state. 48. Clerks of the circuit court, on the day succeeding the return-day of such election,

shall make out, in words, certified statements, officially sealed, of the number of votes given to each person for governor and lieutenant-governor, for representative in congress, judges of the supreme and circuit courts, clerk of the supreme court, reporter of the decisions of the supreme court, prosecuting attorney, superintendent of public instruction, secretary, auditor, and treasurer of state, and for senator and representative in the general assembly, and shall deliver the same to some postmaster of the county, to be transmitted, by mail, to the secretary of state, taking from such postmaster, and filing, a certificate setting forth particularly the time when such certified statement was deposited in such post-office.

Mandamus lies to compel the clerk to perform this duty, 2 Ind. 423; for his duties are clearly ministerial, 19 Ind. 356. But it will not lie if the election is clearly void, 17 Ind. 554; 19 Ind. 356.

Sec. 4727. Duty of secretary of state. 49. The secretary of state shall, in the presence of the governor, compare and estimate the number of votes given for judges of the supreme court, reporter of the decisions of the supreme court, clerk of the supreme court, secretary, auditor, and treasurer of state, and superintendent of public instruction, and certify to the governor the persons receiving the highest number of votes for such offices, and also compare and estimate the number of votes given for judges of the circuit court and prosecuting attorneys, and certify to the governor the persons having received the highest number of votes in their respective districts; and, thereupon, the governor shall transmit, by mail, to such persons their commissions.

The governor's commission is only *prima facie* evidence of its own recitals, 61 Ind. 379; 110 Ind. 272. He can not be compelled by mandate to issue a commission, 127 Ind. 589 (overruling in fact 72 Ind. 567; 6 Ind. 496; 33 Ind. 517).

Sec. 4728. Secretary of state and governor, as to congressmen. 50. The secretary of state, as soon as he shall receive such certified statements, shall compare and estimate the votes given for representatives in congress, and certify to the governor the persons having the highest number of votes as duly elected; and the governor shall give to each of the persons returned to him, as aforesaid, a certificate of his election, sealed with the seal, and attested by the secretary of state: *Provided*, That no return of any county which has come into his hands, and which has been duly authenticated by the clerk thereof, under seal, as hereinbefore provided, shall be rejected by said secretary of state, but he shall estimate, aggregate, and tabulate, and report to the governor the total number of votes cast in each county for each candidate for state office, supreme judge, or other officer to be elected by all the voters of the State, and members of congress, as evidenced to him by the face of such return so certified to him.

Sec. 4729. Clerk's duty as to election of governor. 51. Each clerk of the circuit court shall, on the day following the return-day of an election for governor and lieutenant-governor, make out, at full length, two certified statements, under the seal of his court, of the number of votes each candidate received; one of which he shall transmit to the speaker of the house of representatives of the next general assembly, by his senator or representative, who shall deliver the same to such speaker on or before the second day of the session, and the other certified statement shall be transmitted by mail to Indianapolis, directed to said speaker, and to the care of the secretary of state, by whom the same shall be delivered to the speaker on or before the second day of the session.

Courts have no jurisdiction of an action to enjoin the secretary of state from delivering to the speaker of the house of representatives the sealed returns, alleged to be wrongful and illegal, of an election for lieutenant-governor, which are directed to the speaker, as required by law, in care of the secretary, and are to be delivered to him by the latter, 109 Ind. 1.

Sec. 4730. Pay of officers. 52. Each inspector, judge, and clerk of any election shall be allowed and paid two dollars for each day's service while attending such election and performing the duties of his office; and the same rate for one day's services, and mileage at the rate of five cents per mile, going and returning, shall be allowed and paid to each member of the board of canvassers.

ARTICLE 2—SPECIAL ELECTIONS.

SEC.
4731. When to be held.
4732. When governor to order.
4733. Notice by sheriff.
4734. How conducted.

[1881 S., p. 482. Approved March 11, 1881, and in force September 19, 1881.]

Sec. 4731. When to be held. 53. A special election shall be held in the following cases:

First. Whenever a vacancy shall occur in the office of senator or representative during a session, or when the legislature will be in session after the occurrence of a vacancy and before a general election.

Second. Whenever a vacancy shall occur in the office of representative in congress while in session, or when congress will be in session after such vacancy occurs and before a general election.

Third. Whenever two or more persons receiving votes at any election shall have the highest and an equal number of votes for the same office.

Fourth. Whenever a vacancy occurs in any office required to be filled at a special election.

Sec. 4732. When governor to order. 54. Special elections not otherwise provided for shall be ordered by the governor, who shall issue a writ or writs of election, directed to the sheriff or sheriffs

of the proper county or counties; and such writ shall specify the county, district, or circuit in which such election is to be held, the cause and object of such election, the name of the person whose office is vacant, and the day on which such election shall be held; which day shall be the same in case such election is held in a district or circuit formed of two or more counties.

SEC. 4733. Notice by sheriff. 55. The sheriffs who receive such writs ordering a special election shall give the same notice thereof as is required of general elections: *Provided*, Such notice may be set up and published ten days only.

SEC. 4734. How conducted. 56. All special elections shall be conducted, returned, certified, and canvassed, and certificates and commissions shall issue, and shall in all respects be governed by the provisions of this law regulating general elections, so far as applicable.

ARTICLE 3—TOWNSHIP ELECTIONS.

SEC.
4735. When held.
4736. Canvass—Inspector's duties.
SEC.
4737. Certificates.

[1889 p. 425. Approved March 11, 1889, and in force May 10, 1889.]

SEC. 4735. When held. 57. An election shall be held in each township in each county in this State, on the first Monday of April, 1891, and every fourth year thereafter, for the purpose of electing justices of the peace, township trustees, assessors, constables, and such other officers of townships, as may be provided for by law; which elections shall be conducted by the officers [of] and governed by the provisions of the law with respect to general elections so far as applicable. [El. Sup. § 1390.]

The county reimburses the township for its expenses in conducting township elections, 107 Ind. 584.

[1881 S., p. 482. Approved April 21, 1881, and in force September 19, 1881.]

SEC. 4736. Canvass—Inspector's duties. 58. The board of judges shall count the votes given for each person for each office, and certify the result, and the inspector shall file one of the poll-books and tally-sheets, with ballots on a string, in the clerk's office of the county, within ten days after such election. If two or more have the highest and an equal number of votes for the same office, such judges shall, when the result is certified, determine by lot the person entitled to the office; and the next day, the inspectors shall make out and deliver to the person elected, when demanded, a certificate for each person elected to any office in said township, except justices of the peace: *Provided*, That, if there be more than one precinct in said township, then the inspectors of the several precincts shall meet, on the day following the election, at the office

of the township trustee, at as near ten o'clock A. M. as is practicable, and compare the poll-books and certificates thereto held by them, and having aggregated the vote of the township, declare and certify the result; and if two or more persons have the highest and an equal number of votes for the same office, they shall determine, by lot, which shall be declared elected, and give a certificate accordingly.

1. This section is constitutional, 27 N. E. Rep. 422; S. C. 128 Ind.

2. The general assembly possesses the power to compel the production of election papers under this section, 109 Ind. 1, 7.

[1889, p. 344. Approved March 9, 1889, and in force May 10, 1889.]

SEC. 4737. Certificates. 59. Such certificate shall entitle the holder to qualify and enter upon the discharge of the duties of the office to which he is elected, at the expiration of ten days from the day of such election, except that of township trustee and township assessor, who shall enter upon the duties of their offices on the first Monday of August following such election, and also except that the certificates of election of justices of the peace shall be forwarded by the inspector aforesaid to the clerk of the circuit court, who shall certify the result for that office to the secretary of state. [El. Sup. § 1395.]

1. Section 60 of this law refers exclusively to city and town elections, and is set out under "Cities and Towns," being § 3224.

2. In computing ten days, the day of election is excluded.

ARTICLE 4—RE-COUNTING.

SEC.
4738. When candidate may have.
4739. Proceedings to obtain.
4740. Order for re-counting—How conducted.
4741. Certificate of re-count.
4742. Adjournments forbidden—Pay—Ballots, how preserved.

[1881 S., p. 482. Approved April 21, 1881, and in force September 19, 1881.]

SEC. 4738. When candidate may have. 61. At any time within ten days after the Thursday next succeeding any election, any candidate for office at such election, desiring to contest the same, may petition, in writing, the circuit court, if in session, or the judge thereof in vacation, for a re-count of the ballots cast at such election, by three commissioners, appointed by the court or judge, two of whom shall be from different political parties: *Provided*, That such appointments shall be made from the political parties which cast the highest number of votes at the last preceding general election.

As the ballots are now destroyed these sections are practically nullified. The only ballots that can be counted are those that the election board have declined to count or have counted over the protest of one of their number; and perhaps the court has the power to appoint commissioners to canvas these ballots where they have been preferred. Only those are preserved over which the board can not agree, concerning § 4709*a*.

Sec. 4739. Proceedings to obtain 62. Upon the petition of such candidate, duly verified, showing that he desires to contest such election, and honestly believes that there was a mistake or fraud committed in the official count, and that he desires a re-count of the ballots cast at said election for the office for which he was a candidate, and upon proof that he has served a written notice upon the opposing candidate of the time and place of such application, five days before the hearing, and upon his furnishing a written undertaking, with sufficient freehold surety, that he will pay all the costs of such re-count, the court or judge shall grant the prayer of said petition and order said re-count to be made.

Sec. 4740. Order for re-counting—How conducted. 63. In appointing such commissioners to make said re-count, the court shall fix the time within which the same shall commence, not exceeding twenty days thereafter, and the clerk of the circuit court shall act as the clerk of said commissioners. The order shall provide that each of the candidates may be present during said re-count; and two qualified voters of the county, selected by each of said candidates, may also be present, who may witness the re-count of the vote; and such witnesses shall conduct themselves in a quiet and orderly manner, and shall not interrupt said commissioners while in the discharge of their duties. Such order shall be entered on the order-book of the circuit court.

Sec. 4741. Certificate of re-count. 64. When said re-count is finished, the commissioners, or a majority of them, shall make out a certificate, under their hands, stating the number of votes that each of said candidates has received for said office in each township and precinct, and which of said candidates, as shown by the said re-count, received the highest number of votes, and what his majority or plurality was; and said certificate shall be filed with the clerk of the circuit court and recorded in the order-book of said court. Such certificate, or the record thereof, may be used as evidence of the facts therein recited upon the trial of any contest of said election between said candidates.

The certificate in a contest or proceeding by information is only *prima facie* evidence of the result of the election, 101 Ind. 36.

Sec. 4742. Adjournments forbidden—Pay—Ballots, how preserved. 65. No adjournment shall be had until said re-count is finished and said certificate is made out and filed. Said commissioners shall each be allowed, and paid by said petitioner, at the rate of three dollars per day, each, for their services. Said clerk shall, as soon as such re count is completed, replace said ballots in the ballot-boxes, securely lock and seal them, and keep them as above provided. For his services in the matter of such re-count, said clerk shall receive from such petitioner the sum of five dollars.

ARTICLE 5—CONTEST.

SEC.
4743. Who may contest.
4744. Contest for state office.
4745. Notice.
4746. Committee to try—Powers.
4747. Contesting seat of legislator.
4748. Depositions.
4749. Notice to contestee.
4750. Powers of justices.
4751. Vacancy.
4752. Meeting of justices—Their duty.
4753. Clerk's duty.
4754. Duty of secretary of state.
4755. Depositions, when read.
4756. Causes for contest.
4757. Election, when not set aside.
4758. Contest for local offices.
4759. Notice by auditor to clerk.
4760. Notice to county board and contestee.
4761. Supœnas—Trial of contest.
4762. Appeals.
4763. Duty of court on appeal.
4764. Voters compelled to testify.
4765. Fees and costs.
4766. Commissioner to take testimony.
4767. Contest for municipal offices.
4768. Appeal to supreme court.

[1881 S., p. 482. Approved April 21, 1881, and in force September 19, 1881.]

SEC. 4743. Who may contest. 66. The election of any person declared elected by popular vote to any office, whether state, county, township, or municipal, may be contested by any elector who was entitled to vote for such person. The person contesting such election shall be known as the contestor; the person whose election is contested, as the contestee.

A claimant to the office of lieutenant-governor can not maintain an information in the nature of *quo warranto* to settle the title to that office, as § 132, R. S. 1881, of the constitution, vests exclusive jurisdiction of such controversies in the general assembly, 109 Ind. 79.

SEC. 4744. Contest for state office. 67. When such elector may choose to contest the election of any state officer, elective by the people, he shall, within twenty days after the first day of the next session of the general assembly thereafter, deliver to the presiding officer of the house of representatives specifications of the grounds of such contest; which specification shall be verified by the affidavit of such electors.

SEC. 4745. Notice. 68. As soon as such presiding officer receives such specifications, he shall make out a notice of contest, which, together with a copy of the specifications, he shall cause to be directed and delivered to the person whose election is contested; and shall immediately give notice to both houses that such specifications have been received.

SEC. 4746. Committee to try—Powers. 69. Each house shall choose, by a *viva voce* vote, seven members of its own body; and the members thus selected shall constitute a committee to try and determine such contested election; and for that purpose shall hold their meeting publicly, at the capitol, at such time and place as they may designate, and may adjourn from day to day, or to a day certain, until such trial shall be determined. They shall have power to send for persons and papers and to take all necessary means to procure testimony, extending like privileges to the contestor and the contestee; and shall report their judgment in the premises to both branches of the general assembly; which report

shall be entered on the journals of the respective houses, and the judgment of such committee shall be conclusive. If such election be adjudged invalid, such office shall be vacant.

Sec. 4747. Contesting seat of legislator. 70. Any such elector who may choose to contest the election of any person declared elected to a seat in the senate or house of representatives shall, within ten days after such election, file with the clerk of the circuit court of the county in which the alleged cause of contest originated, a statement of the grounds of contest on which he relies, and that he was entitled to vote at such election, verified by his affidavit.

Sec. 4748. Depositions. 71. When such statement shall be filed, such clerk shall issue a commission directed to two justices of the peace of his county, not of kin to the contestor nor to any person who was a candidate at such election for the office the election to which is contested, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of witnesses.

Sec. 4749. Notice to contestee. 72. Written notice of such contest, specifying the time and place of taking depositions and before whom to be taken, and a copy of such statement, certified by such clerk, shall, within ten days after such statement shall have been filed, be delivered to the contestee, or, if he can not be found, shall be left at his last and usual place of residence by the sheriff of the county, who shall return to such clerk a certified copy of such notice, with the manner and time of service indorsed thereon, for which he shall receive from the contestor the same fees allowed in writs of summons.

Sec. 4750. Powers of justices. 73. Either of such justices shall have power to issue subpœnas, to be served by the sheriff; and when met at the time and place appointed to take depositions, shall have the same power to issue attachments and assess fines against witnesses as is given to justices in the trial of suits instituted before them.

Sec. 4751. Vacancy. 74. If either of the justices first appointed becomes unable to proceed in such examination, such clerk shall fill the vacancy with any other justice of the county.

Sec. 4752. Meeting of justices—Their duty. 75. Such justices shall meet at the time and place appointed, take and certify such depositions as in other cases, and may adjourn from time to time, and when the same is closed, shall deliver the depositions, with the commission, to such clerk.

Sec. 4753. Clerk's duty. 76. Such clerk shall seal up the depositions, original statement of the grounds of contest, the copy

of the notice served on the contestee, and the commission issued to such justices, indorse thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried, and transmit the same, by mail, to the secretary of state.

Sec. 4754. Duty of secretary of state. 77. The secretary of state, on or before the second day of the session of the general assembly held next thereafter, shall deliver such depositions to the presiding officer of the proper house, who shall immediately lay the same before such house.

Sec. 4755. Depositions, when read. 78. At any time after notice of contest, and before final determination, either party may take depositions to be read on the trial, under the rules regulating the taking of depositions to be read in the circuit court; and such depositions shall be sent, by mail, to the secretary of state, who shall deliver the same, unopened, to the presiding officer of the proper house.

Sec. 4756. Causes for contest. 79. Any election, the contest of which is provided for in this act, may be contested for any of the following causes:

First. For irregularity or malconduct of any member or officer of the proper board of judges or canvassers.

Second. When the contestee was ineligible.

Third. When the contestee, previous to such election, shall have been convicted of an infamous crime, such conviction not having been reversed nor such person pardoned at the time of such election.

Fourth. On account of illegal votes.

1. A *mistake* in the *count* of the votes, whether innocently or otherwise, is a good ground of contest; and evidence thereof is admissible under an allegation that the contestor received a greater number of votes than his opponent, 58 Ind. 302.

2. The real question is, who received the *highest* number of *legal* votes; and irregularity or malconduct of a member of the board of judges or canvassers, which does not affect the number of votes, is not a ground of contest, 50 Ind. 298.

3. As to the sufficiency of a statement of the grounds of contest where illegal votes were cast, see 28 Ind. 131. It is not necessary that a *list* of the names of the illegal voters should be filed, 27 Ind. 191.

4. A party to a contested election proceeding is entitled to show, by direct or indirect evidence, that there was *fraud* on the part of the election officers, resulting in his injury, that votes cast were illegal, or that, by changing the ballots, or by wrongfully interfering with the election papers, a greater number of voters were credited to his opponent than he was entitled to; and the right to this evidence is not affected by the fact that illegal votes were cast for such party, or that frauds were perpetrated in his interest, 113 Ind. 148; 50 Ind. 298.

5. The fact that some one else is prosecuting a contest of an election for the same office does not prevent one who has received a certificate of election, and who has duly qualified, from taking possession of the office, 40 Ind. 469.

Sec. 4757. Election, when not set aside. 80. No irregularity or malconduct of any member or officer of a board of judges or canvassers shall set aside the election of any person, unless such irregularity or malconduct was such as to cause the contestee to be declared elected when he had not received the highest number of legal votes; nor shall any election be set aside for illegal votes, unless the number thereof given to the contestee, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office.

1. Where the statement alleged that the officers incorrectly certified to a larger number of votes for the contestee than the contestor, and the answer admitted the mistake, but averred that the contestor received more illegal votes than those incorrectly certified, and the contestor replied that as many illegal votes were cast for the contestee as the contestor, the statement and answer were both held good on demurrer, and the reply was not a departure, 50 Ind. 298.

2. To a statement charging that illegal votes were cast for the contestee equal to his declared majority, it is a sufficient answer that illegal votes were given and counted for the contestor, and that the contestee received a majority of the legal votes cast, 48 Ind. 301.

3. This section is applicable to city and town elections, § 4767. See 34 Ind. 425.

4. The provisions of this section announce a principle of law which prevails independent of them. Statutes regulating the mode of conducting elections are directory, and any departure from the prescribed mode will not vitiate an election if the irregularity does not deprive any legal voter of his vote, or admit a disqualified voter to vote, or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive a benefit from it, 34 Ind. 425. See § 4678, *note* 11.

5. Where a change in the voting place was made only two days before the day of election, of which change no notice was given, but at a time when the board of commissioners were not restricted as to the time of making such change, and there was no charge of fraud, nor that any legal voter was prevented from voting, nor that any illegal voter was permitted to vote, the election was held valid, 34 Ind. 185. See § 4687, *notes*.

6. The fact that two inspectors in a township made no returns was held not to vitiate an election, it appearing that the whole number of votes cast in their precincts, if all cast against the proposition that was carried would not have changed the result, 34 Ind. 185. Mere informalities in the returns does not defeat the election, 89 Ind. 540.

Sec. 4758. Contest for local offices. 81. All contests for county and township offices shall be tried in the proper county; and all contests for district and circuit offices, not otherwise provided in this act, shall be tried in the county giving the largest vote for such office at such election; and whenever any elector shall choose to contest such election, he shall file with the auditor of the proper county, within ten days after such person has been declared elected, a written statement specifying the grounds of contest, verified by the affidavit of such elector.

1. If the *affidavit* be made by any person other than the contestor, the proceeding should be dismissed, 46 Ind. 122; 8 B. 310. The statement may be *sworn* to *before* the *auditor*, 42 Ind. 320. See 8 B. 310.

2. The *affidavit* is not bad for using the words "as he is informed and verily believes," 27 Ind. 191; Gov., 31 *id.* 151.

3. The contestee need not swear to the *grounds* on which he resists the contest, 48 Ind. 301.

4. The right to an office may also be contested by an *information*, under sections 1131 and 1132, R. S. 1881, 65 Ind. 393; 34 Ind. 425; 81 Ind. 558; even when proceedings at the time are pending to contest the election, 107 Ind. 374.

5. *Injunction* is not the proper remedy for obtaining possession of an office to which a person has been elected, and from which he is illegally excluded by a usurper, 13 Ind. 548. *Mandamus* is not available to settle the title to an office as between adverse claimants; but where a person holds a *prima facie* and uncontested title to the office, or where his title has been adjudicated and finally established by a competent tribunal, a writ of mandate may be issued to put him in possession. Judgment entered upon an *illegal agreement* concerning who shall hold the office is binding as between the parties until reversed, 115 Ind. 245.

6. If the contest is on the ground that persons not qualified voted, a *list of the voters* alleged to be unqualified need not be set out, 27 Ind. 191.

7. An *admission* that a list of those who voted, filed before the board of county commissioners, were not qualified to vote, made "for the uses and purposes of this trial," is not admissible in evidence on appeal; because it was limited, by its terms, to a trial before the commissioners, 27 Ind. 191.

8. *Frauds* in an election may be established by circumstantial as well as by direct evidence, 27 Ind. 191.

9. A *demurer* assigning a want of sufficient facts as causes stated for contesting an election presents no question as to the sufficiency of the affidavit, 42 Ind. 320.

10. The power of the board of county commissioners to hear and determine upon the sufficiency of the *affidavit* filed to contest the election constitutes *jurisdiction;* and the decision, if wrong, is simply erroneous and not void, 42 Ind. 320.

11. A refusal to *dismiss* the action on grounds specially pointed out is not erroneous, although other valid grounds for a dismissal clearly existed, 42 Ind. 320.

12. When *term* of office *begins* in case of contest, see § 4721, *note* 3.

13. The statement of the grounds of contest must be *filed* by the contestor *within ten days* after he has been declared elected by the board of canvassers; and it must appear affirmatively that such was the case on appeal in the circuit and supreme courts, or the case will be dismissed, 87 Ind. 540.

Sec. 4759. Notice by auditor to clerk. 82. When such statement is filed with the auditor of the proper county, he shall immediately give notice, in writing, to the clerk of the circuit court, that the election to such office is contested; and when the office of county auditor is contested, such statement shall be filed with the clerk, who shall do the duties otherwise required by this act of the auditor. The filing of such statement shall be notice to him.

Sec. 4760. Notice to county board and contestee. 83. When such statement is filed with the auditor, he shall issue a notice to the board of county commissioners to meet at the court-house at a designated time, not less than ten nor more than twenty days thereafter, to try such contested election, and shall issue a notice to the contestee to appear at the time and place specified in the notice to the commissioners; which, with a copy of such statement, shall be delivered to the sheriff of the county, who shall, within five days thereafter, serve the same on the contestee, by delivering to him a copy of such notice and statement or leaving a copy thereof at his last usual place of residence.

1. The notice is good when it sufficiently informs the contestee that a contest has been instituted before the proper county board. The provisions as to time and manner of service are merely directory, 58 Ind. 302 (overruling 37 Ind. 198).

2. The board in these trials is governed by the rules of law obtaining in the circuit courts, 58 Ind. 302.

3. Under §§ 4760, 4761, it was the intention of the legislature that the entire time given to the consideration of a contested election case by the board of commissioners should be twenty days altogether, and when before the expiration of such period a contestee without assigning any reason procures a continuation to a time beyond such period the board on the latter date had no jurisdiction and the contestee thereby discontinues his contest, 27 N. E. Rep. 495.

Sec. 4761. Subpœnas—Trial of contest. 84. The auditor, at the request of either party, shall issue subpœnas, which shall be served by the sheriff. Such board of commissioners shall try and determine such contest; and shall have power to compel the attendance of witnesses, to swear and examine the same, to punish contempts as other courts, to adjourn or continue the trial from time to time, not exceeding twenty days altogether; to make the necessary orders for the payment of costs, and to coerce the payment of the same, and shall be governed in such trial by the rules of law obtaining in circuit courts. And if it be proved that any other person than the contestee has the highest number of legal votes, such board shall declare such person elected, and certify the same to the proper officers.

Sec. 4762. Appeals. 85. Appeals may be taken herein, as from other decisions of such board: *Provided*, That the same be taken within ten days.

1. An appeal can not be dismissed for delay of the auditor in filing the transcript and papers upon an appeal, 33 Ind. 197.

2. In contesting an election for the relocation of a county seat, it has been held that no appeal lies from the decision of the board of commissioners; because it is a special proceeding, and no provision has been made for an appeal. See 39 Ind. 536; 40 Ind. 61, and 56 Ind. 330. See, however, the cases cited under § 3197, on the question of appeal.

3. The fact that the appeal bond is made payable to the State is no ground for a dismissal of the appeal, 62 Ind. 60.

Sec. 4763. Duty of court on appeal. 86. If upon such appeal the circuit court confirm such election, a certificate thereof shall issue; if such election be annulled, and no other person declared elected to the same office, it shall be declared vacant.

1. On appeal the circuit court can not *remand* the cause to the commissioners for trial, but must determine it as an original action, 33 Ind. 505.

2. A *jury trial* can not be demanded, 62 Ind. 60; 17 Ind. 254; 113 Ind. 148.

3. A motion made before the board of commissioners to dismiss may be renewed in the circuit court; but a motion to dismiss assigning another cause of dismissal can not be made on appeal. If a special appearance has been entered before the board, and a motion made to dismiss, which is unsuccessful, a full appearance may then be entered; and on appeal a special appearance be again entered, and the original motion again urged, for a dismissal, 58 Ind. 302.

Sec. 4764. Voters compelled to testify. 87. Any witness who voted at such election, when called to testify in any such case, shall be required to answer touching his qualifications; and if he was not a qualified elector he shall be required to answer for whom he did vote, and such admissions shall not be used against him in any prosecution for illegal voting.

1. If a voter is called as a witness he may identify the ballot he cast if he can; but if he can not identify it, or it can not be found, he may then testify for whom he voted, 27 Ind. 191; 61 Ind. 392; 101 Ind. 36; 113 Ind. 148. But under the present law all ballots are destroyed, and such is the presumption, unless in the case of a ballot not counted or protested. The production of the ballot can not, therefore be demanded, unless it is shown or admitted that the witness' ballot is in existence, and in legal custody.

2. *Quare*, is this section valid? See 113 Ind. 148. A witness, however, can not be compelled to tell for whom he voted, unless the vote was illegal. The *presumption* is that his vote was legal, and before he can be required to tell for whom he voted it must be shown, either by his own or other testimony, that he was an illegal voter, 113 Ind. 148.

Sec. 4765. Fees and costs. 88. The sheriff, auditor, clerk, and justices of the peace, for services rendered by them in case of contested elections, shall receive from the party at whose instance such services are performed the fees usually allowed for similar services in other cases; which fees shall be taxed as costs against the losing party, and collected as other costs are taxed and collected.

1. If the contest is discontinued the costs must be taxed to the contestor, 27 N. E. Rep. 495.

Sec. 4766. Commissioner to take testimony. 89. The court trying the cause, at the request of the contestor or contestee, in writing, or upon the application of either party, supported by affidavit showing that a saving of expense to the parties, the convenience of the witnesses, and the ends of justice will be promoted thereby, may appoint a commissioner to take the testimony of witnesses, in writing, at any time before the final hearing, and shall provide, in the order of appointment, that each party shall give reasonable notice to the other of the time and place of such taking. Such commissioner shall have power to subpœna and compel the attendance of witnesses residing in the county; and it shall be his duty to take down, in writing, all the testimony offered by the parties, and to note all objections to the testimony; and he shall report the same to the court trying the cause within the time limited by the order appointing him.

Sec. 4767. Contest for municipal offices. 90. All contests for municipal offices shall be tried before the circuit court of the proper county in the manner provided by law for the contest of county and township offices. The clerk of the circuit court shall be the person with whom the notice of contest shall be filed, and he shall perform all the duties required to be performed by him

and the auditor in other cases, and the contest shall be set down for trial at the next term of such circuit court.

Formerly the only way in which a municipal election could be contested was by information in the circuit or common pleas court, 34 Ind. 425.

Sec. 4768. Appeal to supreme court. 91. In all cases of contested elections where an appeal has been taken from the board of county commissioners to the circuit court, either party feeling aggrieved by the judgment of said court may appeal therefrom to the supreme court, as in other civil cases. The appeal-bond in such cases shall be in a penalty sufficient to secure any damage which may accrue by a stay of proceedings upon the judgment. And whenever, by reason of such appeal, a party may be excluded from the office to which he may be entitled, pending such appeal, the principal and sureties in said bond shall be liable thereon for the amount of the emoluments of the office to the party deprived thereof.

It is only by virtue of this section that an appeal can be taken, the provisions of the civil code not authorizing it, 9 Ind. 475.

ARTICLE 5*A*—PURITY IN ELECTIONS.

SEC.

4768*a*. Unlawful to purchase votes.
4768*b*. Liability.
4768*c*. Complaint — Arrest — Bail — Habeas corpus.
4768*d*. When warrant issued.
4768*e*. Rules of evidence.
4768*f*. Bond—Transcript—Judgment.
4768*g*. Discharge from custody.
4768*h*. Trial.
4768*i*. Continuance—Bond.
4768*j*. Transcript—Lien.
4768*k*. Lien.
4768*l*. Attorney fees—Amount of judgment—Stay.
4768*m*. Execution.
4768*n*. Contracts void.
4768*o*. Laws repealed.

[1889, p. 360. Approved and in force March 9, 1889.]

Sec. 4768*a*. Unlawful to purchase votes. 1. Whoever hires or buys, directly or indirectly or handles any money or other means knowing the same is to be used to induce, hire or buy any person to vote or refrain from voting any ticket or for any candidate for any office at any election held pursuant to law, or at any primary election or convention of any political party, then the person so offending in any one of the foregoing particulars, and all other persons aiding, abetting, counseling, encouraging or advising such acts, shall thereby become liable jointly and severally to the person hired, bought, or induced to vote or refrain from voting by the means above enumerated, in the sum of three hundred dollars, and reasonable attorney's fees for collecting the same in an action to be brought as hereinafter provided, on the relation of the voter in whose favor the liability is created by this section. [El. Sup. § 1396.]

The provisions of this article are applicable to cities and towns.

Sec. 4768*b*. Liability. 2. When any liability accrues against any person in favor of another under the provisions of the foregoing section, the latter may bring an action therefor in the name of the State of Indiana on his own relation, either in the circuit or superior court or before any justice of the peace in the county where the defendant or one of the defendants reside, on a complaint in writing under oath. [El. Sup. § 1397.]

Sec. 4768*c*. Complaint—Arrest—Bail—Habeas corpus. 3. When the complaint is filed in the circuit or superior court the clerk shall issue a warrant to the sheriff of any county, or several warrants to sheriffs of different counties where the defendant or different defendants may be, commanding such sheriff to arrest the defendant or defendants. The person arrested in vacation may be admitted to bail by the sheriff, by entering into a bond payable to the State of Indiana, with at least two good freehold sureties resident in the county where the action is brought, to the approval of the sheriff, in a penalty of one thousand dollars conditioned that such defendant will appear on the first day of the next term of said court, and continually until said cause is disposed of, and abide the order of the court; and in default of such bail the sheriff shall commit him to the jail of the county where the action is pending. The judge of the circuit or superior court may discharge such defendant on a writ of habeas corpus if on the hearing of such writ no cause for his imprisonment appears. [El. Sup. § 1398.]

Sec. 4768*d*. When warrant issued. 4. When the complaint is filed before a justice of the peace he shall issue a warrant to the proper constable, commanding him to arrest the defendant and bring him forthwith before him for examination. [El. Sup. § 1399.]

Sec. 4768*e*. Rules of evidence. 5. Upon the arrest of the defendant by the constable, or the return of the warrant that he can not be found, such justice shall proceed to hear and determine said complaint. The rules of evidence both before the justice and in the circuit and superior courts shall be the same as in civil cases. [El. Sup. § 1400.]

Sec. 4768*f*. Bond—Transcript—Judgment. 6. If the justice on hearing adjudges that there is probable cause for the prosecution, he shall, if such defendant is in custody, require him to enter into a bond in the penal sum of one thousand dollars, with at least two good freehold sureties resident in the county, payable to the State of Indiana, and conditioned that he will appear on the first day of the next term of the court wherein the prosecution is pending to answer such complaint, and not depart without leave until the final disposition of said prosecution, and abide the judgment and orders of such court, or, failing therein, he will pay such sums of money and to such persons as may be adjudged by

such court, and shall transmit such bond, together with a certified transcript of his proceedings and the other papers in the cause to the clerk of the circuit or superior court of the proper county. And if such defendant shall fail to give such bond such justice shall commit him to jail until discharged by law. Such bond, or any bond given by said defendant on any continuance or arrest, may be put in suit for a breach thereof by the relator in the name of the State of Indiana for his benefit, and the measure of recovery on said bond shall be the amount of any judgment the relator recovered in the original prosecution, and all costs therein, or, in case the original prosecution has not yet been tried, then the amount the relator can show he would have been entitled to recover, and all costs therein and all costs in the suit on the bond. [El. Sup. § 1401.]

Sec. 4768*g*. Discharge from custody. 7. Any person committed to jail for failure to give bond may be discharged from custody by filing, at any time after such commitment, such bond with the clerk, and with his approval; and a certificate thereof by the clerk to the sheriff or jailer shall be sufficient to authorize him to discharge said defendant from custody. [El. Sup. § 1402.]

Sec. 4768*h*. Trial. 8. The trial and continuance of such prosecution, both before the justice and the circuit or superior court, shall, in all respects herein not otherwise provided, be governed by the law regulating civil suits, except that in trials before justices no jury shall be allowed. [El. Sup. § 1403.]

Sec. 4768*i*. Continuance—Bond. 9. A continuance for cause may be granted to either party both in the circuit or superior courts, and before the justice, and upon the justice granting such continuance to the defendant a like bond shall be required of him as is required in the sixth section for his appearance before the justice instead of the circuit or superior court on the day to which the cause is continued, or commit him to jail for failure to give such bond; and such defendant may be discharged from custody in the same manner as in the seventh section provided. [El. Sup. § 1404.]

Sec. 4768*j*. Transcript. 10. If the defendant shall not have been arrested, or has escaped after arrest, such trial shall proceed in his absence; and if it be adjudged that there is probable cause for such prosecution the justice shall transmit the papers and a transcript of such judgment and proceedings without delay to the clerk of the circuit or superior court of the proper county, who shall file and docket the same for trial; and such cause shall be heard and determined whether the defendant appear or not the same as if he were present. When no arrest has been made notice by publication in a newspaper may be given the defendant as

in other civil cases in the circuit or superior court. [El. Sup. § 1405.]

Sec. 4768*k*. Lien. 11. The filing of such transcript as in sections six and nine provided, and the filing the complaint with the clerk as in section three in this act provided, shall operate from the time of such filing as a lien upon the real estate of such defendant in the county to the extent of the judgment, which may afterward be rendered against him in such prosecution; and such judgment shall have the same effect and lien as if rendered at the time of such filing; and such lien shall be declared in such judgment. [El. Sup. § 1406.]

Sec. 4768*l*. Attorney fees—Amount of judgment—Stay. 12. If the finding of the circuit or superior court of the jury trying the cause is for the defendant he shall recover a reasonable attorney's fee, costs against the relator, and be discharged; if the finding is for the plaintiff the State shall recover judgment against the defendant in the sum of three hundred dollars for the use and benefit of the relator, a reasonable fee for his attorney in said prosecution, and all costs; and the court shall require of such defendant, if he be in custody, to replevy such judgment by good freehold surety, the length of stay to be six months from the date of the judgment, or in default thereof, shall commit such defendant to jail to remain until discharged by law. [El. Sup. § 1407.]

Sec. 4768*m*. Execution. 13. Execution may issue on such judgments whenever any amount remains unpaid on the same, and shall be executed without relief from valuation and appraisement laws. [El. Sup. § 1408.]

Sec. 4768*n*. Contracts void. 14. Any and all contracts and agreements made for the purpose of evading the provisions of this act shall be absolutely void. [El. Sup. § 1409.]

Sec. 4768*o*. Laws repealed. 15. All of sections one, two, three and five of an act entitled "An act to protect the ballot-box, to procure fair elections, to prevent the purchase or sale of votes, to provide means of proving such offenses, prescribing the punishment therefor," and repealing sections two hundred and sixty-eight and two hundred and sixty-nine of "An act concerning public offenses and their punishment," approved April 14, 1881, being sections 2184 and 2185 of the Revised Statutes of 1881, approved March 18, 1885, except so much thereof as makes the mere offer to hire or buy any person to vote or refrain from voting a criminal offense; and all laws and parts of laws in conflict with the provisions of this act are hereby repealed. [El. Sup. § 1410.]

ARTICLE 5*B*—BRIBERY AT ELECTIONS.

SEC.		SEC.	
4768*p*.	Use of money by candidate.	4768*t*.	Challenges.
4768*q*.	Unlawful to loan or give money.	4768*u*.	False Affidavit.
4768*r*.	Hiring voters—Penalty.	4768*v*.	Laws repealed.
4768*s*.	Inducing voters not to vote—Penalty.	4768*w*.	Ballot-box breaking—Penalty.

[1889, p. 267. Approved March 9, 1889, and in force May 10, 1889.]

SEC. 4768*p*. Use of money by candidates. 1. Any person being a candidate for nomination to any office of profit or trust under the constitution or laws of this State, or of the United States, before any convention held by any political party, or at any primary election, who loans, pays or gives, or promises to loan, pay or give, any money or other thing of value to any delegate or elector, or any other person, for the purpose of securing the vote or influence of such delegate, elector or person for his nomination, and whoever hires or otherwise employs for consideration any person to work for the nomination of any person to any office, or to work for the selection of any delegate to be chosen at any party convention or primary election, shall, upon conviction thereof, be fined in any sum not more than five hundred dollars, and disfranchised and rendered incapable of holding any office of profit or trust within this State for any determinate period, and if nominated shall be ineligible to hold such office. [El. Sup. § 319.]

The provisions of this article are applicable to cities and towns.

SEC. 4768*q*. Unlawful to loan or give money. 2. Whoever, being a candidate for any office, loans or gives, directly or indirectly, or offers or promises to loan or give any money or other thing of value to any elector for the purpose of influencing or retaining the vote of such elector, or to induce such elector to work or labor for the election of such candidate, or to refrain from working or laboring for the election of any other candidate, or to any person, to secure or to retain the influence or vote of such elector in his behalf as such candidate, or to be used by such person in any way to influence the vote of any elector, or of electors generally, for himself or any candidate or ticket, and whoever hires or otherwise employs for consideration any person to work at the polls on election day for the election of any candidate to be voted for at such election, shall be fined in any sum not more than one thousand nor less than three hundred dollars, and shall be disfranchised and rendered incapable of holding any office of profit or trust within this State for any determinate period, and a violation of any provision of this section by any person elected to such office shall render his election void, and if he has taken the office, upon conviction shall operate as a vacation of the same. [El. Sup. § 320.]

See § 4702, *note* 5.

Sec. 4768*r*. Hiring voters—Penalty. 3. That any person who shall give or offer to give, directly or indirectly, any money, property or other thing of value, to any elector to influence his vote at any regular election held in this State pursuant to law; or who shall, at any such election, solicit, furnish or receive any money or other means for such purpose, or who shall aid, advise, counsel or suggest to any person, or to persons generally, to use or procure any money or other means to be used to induce, hire, or buy any person or persons to vote or refrain from voting for any candidate or candidates, or to remain away from the polls at any election, whether or not any such person shall act or attempt to act upon any such counsel, advice or suggestion, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars and not more than one hundred dollars, and imprisoned in the county jail not less than ten days nor more than six months, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period not less than ten years, or imprisoned in the State's prison at hard labor not less than one nor more than five years, and disfranchised and rendered incapable of holding any office of profit or trust for the period aforesaid. [El. Sup. § 321.]

Sec. 4768*s*. Inducing voters to not vote—Penalty. 4. That any person who shall, directly or indirectly, give, offer or promise to give to any elector any money, property or other thing of value for the purpose of preventing, influencing, inducing or procuring such elector to refrain from voting or to remain away from the polls at any election held under the laws of this State, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars or more than five hundred dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period not less than ten years, to which may be added imprisonment in the county jail for any period not to exceed six months. [El. Sup. § 322.]

Sec. 4768*t*. Challenges. 5. At any election held under and pursuant to any law of this State, it shall be a ground of challenge that any person offering to vote has used or attempted to use money or other means to buy, hire or induce any elector to vote or refrain from voting for any candidate or candidates, or has advised, counseled or suggested bribery of any elector or electors at any such election, whether the same has been acted on or not; or has sold or offered to sell his vote for any candidate or candidates, at any such election. And when so challenged such elector shall not be permitted to vote until he has taken and subscribed the following:

State of Indiana, }
. . . . . County. } ss.

I, ... , do solemnly swear (or affirm) that I have not

used or attempted to use any money or other means to buy, hire or induce any person or persons to vote or refrain from voting, or to remain away from the polls at this election; and that I have not counseled, advised, suggested or procured any person or persons to bribe any elector or electors to vote for any candidate or candidates, or to refrain from voting, or to remain away from the polls at this election, and that I have not sold or offered to sell my vote, either directly or indirectly, at this election.

Subscribed and sworn to before me this . . . . . day of . . . . , 18 . .

. . . . . .

[El. Sup. § 323.]

See § 4702, for challenges in general.

Sec. 4768*u*. False affidavit. 6. Whoever shall willfully or knowingly make a false affidavit under this act shall be guilty of perjury and punished accordingly. All affidavits made under the preceding sections shall be filed with the board of election and preserved by such board in the manner as other similar affidavits and papers are preserved. [El. Sup. § 324.]

Sec. 4768*v*. Laws repealed. 7. Sections one, two, three and five of an act entitled "An act to protect the ballot-box, to procure fair elections, to prevent the purchase or sale of votes, to provide means of proving such offenses, prescribing the punishment therefor, and repealing sections two hundred and sixty-eight and two hundred and sixty-nine of an act concerning public offenses and their punishment, approved April 14, 1881, being sections 2184 and 2185 of the Revised Statutes of 1881," approved March 17, 1885, and all laws and parts of laws in conflict with the provisions of this act are hereby repealed. [El. Sup. § 325.]

Sec. 4768*w*. Ballot-box breaking—Penalty. 8. Any person not duly authorized by law who shall, during the progress of any election in this State, or after the closing of the polls and before the ballots are counted and result ascertained, or within six months thereafter, break open or violate the seals or locks of any ballot-box, paper envelope or bag in which ballots have been deposited at or after such election, or who shall obtain possession of such ballot-box, paper envelope or bag containing such ballots, and cancel, withhold or destroy the same, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited therein, or who shall fraudulently make any erasure or alteration of any kind upon any tally-sheet, poll-book, list of voters or election return deposited therein, shall be fined in any sum not more than one thousand nor less than five hundred dollars, and imprisoned in the state prison not more than ten nor less than two years, and disfranchised and rendered incapable of holding any office of profit or trust in this State for any determinate period. [El. Sup. § 326.]

ARTICLE 5*c*—CRIMES AGAINST PURITY OF ELECTIONS.

SEC.

4768*x*. Illegal voter.
4768*y*. Voting in wrong precinct.
4768*z*. Non-resident voting.
4768*aa*. Importing voters.
4768*bb*. Voting more than once.
4768*cc*. Hiring men to vote or refrain.
4768*dd*. Selling vote.
4768*ee*. Fraud by officer.
4768*ff*. Altering returns.
4768*gg*. Refusing to receive vote.
4768*hh*. Officer persuading voter.

SEC.

4768*ii*. Officer opening or marking ticket.
4768*jj*. Deceiving illiterate voter.
4768*kk*. Defrauding voter.
4768*ll*. Using violence, threats, or restraint.
4768*mm*. Seizing ballot-box.
4768*nn*. Destroying ballot-box or ballots.
4768*oo*. Inducing voter to re-sign petition.
4768*pp*. Selling signature to petition.
4768*qq*. Fraud at special election.
4768*rr*. Buying vote at special election.
4768*ss*. Bribing to procure election.

[1881 S., p. 174. Approved and in force September 19, 1881.]

SEC. 4768*x*. Illegal voter. 263. Whoever, not having the legal qualifications of a voter at any election authorized by law to be held in this State for any officer whatever, votes or offers to vote at such election, shall be fined not more than five hundred dollars nor less than ten dollars, imprisoned in the county jail not more than one year nor less than one month, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2179.]

1. As to the indictment, see 35 Ind. 485.
2. As to the evidence, see 7 Blackf. 607; 32 Ind. 111, 52 *id.* 361.

SEC. 4768*y*. Voting in wrong precinct. 264. Whoever knowingly votes or offers to vote in any precinct or ward except the one in which he resides, shall be fined not more than five hundred dollars nor less than ten dollars, imprisoned in the county jail not more than one year nor less than one month, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2180.]

SEC. 4768*z*. Non-resident voting. 265. Whoever passes from any other State into this State, and votes or attempts to vote at any voting precinct or ward of this State, not being at the time a *bona fide* resident of such voting precinct or ward, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2181.]

SEC. 4768*aa*. Importing voters. 266. Whoever hires or solicits any person to come from any State into this State for the purpose of voting at any election therein, or to pass from any county to another county, or from any township into another township, or from any voting precinct or ward into another voting precinct or ward of the State, for the purpose of voting therein at any election held therein (such person, so solicited, not being a legal voter in such county, township, precinct, or ward), shall be fined not more

than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2182.]

SEC. 4768*bb*. **Voting more than once.** 267. Whoever votes more than once at any election in this State, either at the same precinct or ward or at different precincts or wards, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2183.]

What is a sufficient indictment, 116 Ind. 45.

SEC. 4768*cc*. **Hiring men to vote or refrain.** 268. Whoever hires, buys, or offers to hire or buy, or furnishes any money or other means to be used, or directs or permits his money or other means to be used, to induce, hire, or buy any person to vote or refrain from voting for any candidate for any office; or whoever attempts to induce any person to vote or to refrain from voting for any candidate for any office, by offering such person any reward or favor, —shall be fined not more than one thousand dollars nor less than twenty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2184.]

For construction, see 60 Ind. 424. Repealed, §§ 4768*o* to 4768*v*.

SEC. 4768*dd*. **Selling vote.** 269. Whoever sells, barters, or offers to sell or barter his vote for any candidate for any office, either for any money or property or thing of value or for any promise or favor or hope of reward, given or offered by any candidate or by any other person or persons, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2185.]

Repealed, §§ 4768*o* to 4768*v*.

SEC. 4768*ee*. **Fraud by officer.** 270. Whoever, being a township trustee, inspector, judge of election, or clerk of election, takes out of the ballot-box any ballot legally deposited therein, for the purpose of destroying the same or substituting another in its place, or after the same has been legally taken out, intentionally destroys or misplaces the same with the intent to substitute another ballot therefor, or with the intent to prevent the same from being counted at such election; or knowingly enters upon the poll-books the name of any person who has not legally voted at such election; or intentionally tallies any vote to any candidate not voted for by

such ballot; or permits any one of these acts to be done,—shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2186.]

Sec. 4768*ff*. Altering returns. 271. Any township trustee, inspector, or any person acting for or on behalf of any trustee or inspector while forming a board of canvassers or before the canvassing of any board of canvassers or after the adjournment of any board of canvassers, who shall, with intent to cheat and defraud, alter any election return as made by the election board of any voting precinct, either by increasing the vote of any candidate or reducing the same; or shall intentionally destroy, misplace, or lose any poll-book or tally-sheet; or any clerk of court, who shall, with intent to cheat and defraud, change or alter in any way the vote of any candidate as returned by the board of canvassers; or any such trustee, inspector, clerk, or deputy clerk, or other person acting for such persons, who shall consent to the same being done, or who shall permit the same to be done,—shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2187.]

Sec. 4768*gg*. Refusing to receive vote. 272. Whoever, being an inspector or judge of any election held within this State, knowingly and willfully, or corruptly, refuses or neglects to receive the vote of any legal voter at any election held within this State, shall be fined not more than five hundred dollars nor less than fifty dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2188.]

1. As to the indictment, see 27 Ind. 492.
2. As to the evidence, see 17 Ind. 536; 26 *id*. 264.

Sec. 4768*hh*. Officer persuading voter. 273. Whoever, being an inspector, judge, or clerk of an election, attempts to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, shall be fined not more than one hundred dollars nor less than ten dollars. [R. S. 1881, § 2189.]

Sec. 4768*ii*. Officer opening or marking ticket. 274. Whoever, being a judge, inspector, clerk, or other officer of an election, opens or marks, by folding or otherwise, any ticket presented by such elector at such election; or attempts to find out the names thereon; or suffers the same to be done by any other person, before such ticket is deposited in the ballot-box,—shall be fined in

any sum not more than one hundred dollars nor less than ten dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2190.]

Sec. 4768*jj*. Deceiving illiterate voter. 275. Whoever furnishes an elector who can not read the English language, at any election held pursuant to law, with a ticket which such person shall represent to such elector as containing a name different from the one printed or written thereon, shall be fined not more than one hundred dollars nor less than ten dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2191.]

Sec. 4768*kk*. Defrauding voter. 276. Whoever fraudulently causes or attempts to cause any elector, at any election held pursuant to law in this State, to vote for a person different from the one he intended to vote for, shall be fined not more than one hundred dollars nor less than ten dollars. [R. S. 1881, § 2192.]

Sec. 4768*ll*. Using violence, threats, or restraint. 277. Whoever, for the purpose of influencing a voter, seeks, by violence or threats of violence or threats to enforce the payment of a debt; or to eject or threatens to eject from any house he may occupy; or to begin a criminal prosecution; or to injure the business or trade of an elector; or, if an employer of laborers or an agent of such employer, threatens to withhold the wages of or to dismiss from service any laborer in his employment; or refuses to allow to any such employee time to attend at the place of election and vote,—shall be fined not more than one thousand dollars nor less than twenty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2193.]

Sec. 4768*mm*. Seizing ballot-box. 278. Whoever, at any election, unlawfully, either by force, fraud, or other improper means, obtains or attempts to obtain possession of any ballot-box or any ballots therein deposited, while the voting at such election is going on or before the ballots are duly taken out of such ballot-box and counted by the election board according to law, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2194.]

Sec. 4768*nn*. Destroying ballot-box or ballots. 279. Whoever unlawfully destroys or attempts to destroy any ballot-box used, or any ballot or vote deposited, or any poll-book kept at any election,

shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2195.]

Sec. 4768*oo*. Inducing voter to re-sign petition. 280. Whoever, by persuasion, menace, or reward, or promise thereof, induces or attempts to induce any legal voter of any county to re-sign any written or printed petition for the relocation of the county seat of any county or any remonstrance against such relocation, shall be fined not more than five hundred dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than six months nor less than ten days, and he shall be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2196.]

Sec. 4768*pp*. Selling signature to petition. 281. Whoever, being a legal voter of any county, sells or barters or offers to sell or barter for money, property, or thing of value, or for any promise or hope of reward, given or offered by any person, his signature to any written petition for the relocation of any county seat, or to any remonstrance against such relocation, shall be fined not more than five hundred dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than six months nor less than ten days, and he shall be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. [R. S. 1881, § 2197.]

Sec. 4768*qq*. Fraud at special election. 282. Whoever votes more than once at any election for the relocation of any county seat, or for aid to any railroad, either at the same precinct or at different precincts, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not more than fifty dollars nor less than ten dollars. [R. S. 1881, § 2198.]

Sec. 4768*rr*. Buying vote at special election. 283. Whoever buys or offers to buy, either by himself or by any other person, or furnishes any money or any other means to be used, or who shall permit his money or other means to be used, to hire, buy, or induce any person to vote for or against the removal of a county seat, or for or against the appropriation of aid to any railroad; or whoever attempts to induce any person to vote for or against such removal or appropriation, by offering any reward or favor,—shall be deemed guilty of a misdemeanor. And whoever, being a voter of this State, sells or barters or offers to sell or barter, for any money or property, or any thing of value, or any promise or hope of reward given or offered by any person or persons, his vote for the removal or for the relocation of a county seat,

or against such removal or relocation, or against such appropriation or in favor of such appropriation for said railroad, shall be deemed guilty of a misdemeanor. And, upon conviction of violating any of the provisions of this section, the person so offending shall be fined in any sum not more than one hundred dollars nor less than twenty-five dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period not exceeding five years. [R. S. 1881, § 2199.]

SEC. 4768*ss*. **Bribing to procure election.** 284. Whoever gives or offers a bribe, threat, or reward to procure his election to any office under the constitution or laws of this State, shall be fined not more than one thousand dollars nor less than fifty dollars, and imprisoned in the state prison not more than five years nor less than one year; and such person so offending, if elected to such office, shall be disqualified from holding office during the term for which he may have been elected, and also disfranchised for any determinate period. [R. S. 1881, § 2200.]

CHAPTER LXIX.

HEALTH.

SEC.

4986. State board—Appointment.
4987. Oath of office.
4988. Duties of secretary.
4989. Salaries—Expenses.
4990. Meetings—Quorum—Rules.
4991. Duties—Annual report.
4992. Vital and sanitary statistics.
4993. Local boards.
4994. Report of board—Misdemeanor.
4995. Duty of physcians and others—Misdemeanor.
4996. Duties of clerk.
4997. Records—Forms—Blanks.
4998. Annual appropriations.
4999. Misdemeanor.
5000. Repealing clause.

[1891, p. 15. Reconsidered and passed over the Governor's veto February 19, 1891, and it took effect immediately by reason of the emergency clause.]

SEC. 4986. State board—Appointment. 1. A board is hereby created and established which shall be known under the name of the State Board of Health. It shall consist of five members as follows: Four members who shall be appointed by a board of appointment consisting of the governor, secretary of state and auditor of state, a majority of which shall constitute a quorum, who shall meet in the office of the governor within ten days after the passage of this act and shall proceed to appoint two members of said board of health whose term of office shall expire on the first day of March, 1893, and two whose term of office shall expire on the first day of March, 1895. Thereafter two members shall be appointed biennially who shall hold their offices for four years. Any vacancy in said board of health shall be filled by said state officers. Said board of health, when so appointed, shall elect a secretary, who shall be a physician, and shall be the health officer of the State, and shall hold his office for four years, who, by virtue of his election, shall be a member of said state board of health.

SEC. 4987. Oath of office. 2. Before entering upon the discharge of their duties the members of said board of health shall each take and subscribe an oath of office before the clerk of the supreme court, or any other officer authorized to administer an oath, that they will faithfully and honestly discharge the duties of said offices, which oath of office shall be filed in the office of the secretary of state.

SEC. 4988. Duties of secretary. 3. The secretary of the board shall keep his office at Indianapolis, and shall perform such duties

as are prescribed by this act, or may be required by the board. He shall keep the custody of all papers, books, documents and other property belonging to the board; he shall, so far as practicable, communicate with other state boards of health, and with the county boards of health within this State; he shall keep and file all reports received from such boards, and all correspondence of the office appertaining to the business of the board. He shall prepare blank forms of returns and such instructions as may be necessary, and forward them to the secretaries of the several county boards of health throughout the State. He shall collect information concerning vital statistics, knowledge respecting diseases, and all useful information on the subject of hygiene, and through an annual report and otherwise, as the board may direct, shall disseminate such information among the people.

Sec. 4989. Salaries—Expenses. 4. The secretary shall receive an annual salary not to exceed twelve hundred dollars, which shall be fixed by the members of the board. The board shall quarterly certify the amount due him, and, on presentation of said certificate, the auditor of state shall draw his warrant on the state treasurer for such amount. The members of said board shall receive no other compensation for their services but their traveling and other necessary expenses while employed on the business of the board. Such expenses shall be paid in like manner as the salary of the secretary.

Sec. 4990. Meetings—Quorum—Rules. 5. The board shall meet at least once in each quarter in the city of Indianapolis, and as often as they may deem necessary and at such other times and places as they may deem expedient during epidemics. A majority shall constitute a quorum for the transaction of business. They shall choose one of their number for president, who shall serve two years, unless his term of office as a member of the board shall sooner expire. They may adopt rules and by-laws subject to the provisions of this act, and in harmony with other statutes in relation to the public health, to prevent outbreaks and the spread of contagious and infectious diseases.

Sec. 4991. Duties—Annual Report. 6. The state board of health shall have the general supervision of the health and life of the citizens of the State. They shall study the vital statistics, and endeavor to make intelligent and profitable use of the collected records of death and sickness among the people; they shall make sanitary investigations and inquiries, respecting the causes of disease and especially of epidemics; the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits and circumstances, on the health of the people. They shall have power to regulate and prescribe the location of the plumbing, drainage, water supply, disposal of excreta, heating and ventilation, of any

public building or institution, and to inspect the same. They shall annually, on or before the first day of December, make a report to the governor of their doings and investigations for the year ending October 31, next preceding, with such suggestions with regard to legislation as they may deem important in reference to the public health.

Sec. 4992. Vital and sanitary statistics. 7. The state board of health shall have supervision of the system of registration of births, deaths and marriages, as herein provided, and they shall make up such forms from time to time, as they may deem necessary for the thorough registration and report of vital and sanitary statistics throughout the State. The secretary shall be superintendent of all such registration, and with consent of a majority of all members of said board, shall have the power to appoint and fix the compensation of any clerical force that may within his judgment be or become necessary for the making and keeping the records of said board of health.

For construction of corresponding section of the act of 1881, see 111 Ind. 101.

Sec. 4993. Local boards. 8. The trustees of each town, the mayor and common council of each incorporated city, except where a regularly constituted board of health, by ordinance of such city exists, or may hereafter be created, and the board of commissioners of each county, shall constitute a board of health, ex officio, for each town, city and county respectively of the State, whose duty it shall be to protect the public health by the removal of causes of diseases when known, and in all cases to take prompt action to arrest the spread of contagious diseases, to abate and remove nuisances dangerous to the public health, and perform such other duties as may from time to time be required of them by the state board of health pertaining to the health of the people. They shall annually at their first meeting in December elect a secretary, who shall be the executive officer of the Board, who shall serve as such health officer for one year from the first of January next ensuing his election. He shall receive such compensation from the town, city or county treasury respectively as the board electing him may determine. The records of the county board of health shall be kept at the county seat.

1. See § 3098 and § 3106, clause 35.

2. Cities and towns by ordinance may regulate certain nuisances tending to impair the health, notwithstanding the acts denounced in the ordinances are crimes under the laws of the State, R. S. 1881, § 2066, *proviso*.

3. A physician who is elected by the board of county commissioners, acting as a board of health, as its secretary, is entitled to such compensation from the county treasury as such board of health may determine; and when so determined, it is the duty of the board of county commissioners as such to cause it to be paid out of the county treasury by the auditor's warrant for the amount on the treasurer. The amount, however, need not be fixed by the board of health as such; it may be fixed by the board of county commissioners; when

allowed by them the allowance will be valid. The board of health can use the records of the county commissioners in which to enter its proceedings, and need not use separate records when the county commissioners constitute such board of health. No appeal lies from the board of health in fixing the compensation of the secretary. In that matter they have a discretion, 101 Ind. 138.

4. After electing a secretary the board of health can not annul his election and elect a new one in his place. The term of his office is one year. The only qualification required of the secretary is that he must be a physician, 96 Ind. 311.

5. When the appointment is entered of record in the commissioners' record it can not be shown that the appointment was made at another time and that the board was not then in session, even though the record is unsigned, 96 Ind. 311.

Sec. 4994. Report of board—Misdemeanor. 9. The board of health of each county shall be subordinate to the state board of health, and it shall be the duty of the secretary of such county boards, at least once in each quarter, to report such facts and statistics as may be required under instructions from and in accordance with blanks furnished by said board; and it shall be the duties of the secretaries of town and city boards of health to make like reports to the secretaries of the county boards in which such towns and cities are situated, to which county boards of health such town and city boards are subordinate. It shall be the duty of county boards of health to promulgate and enforce all rules and regulations of the state board of health in their respective counties, which may be issued from time to time for the preservation of the public health, and for the prevention of epidemic and contagious diseases. And the secretary of any board of health who shall fail or refuse to promulgate and enforce such rules and regulations, and any person or persons, or the officers of any corporation, who shall fail or refuse to obey such rules and regulations, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars, and upon a second conviction the court or jury trying the cause may add imprisonment in the county jail for any period not exceeding ninety days.

Sec. 4995. Duty of physicians and others—Misdemeanor. 10. It shall be the duty of all physicians and accouchers in this State to report to the secretary of the board of health of the town, city or county, in which they may occur, all births and deaths which may occur under their supervision, with a certificate of the cause of death, and such co-relative facts as may be required in the blank forms, furnished as provided in this act. When any birth or death may occur, with no physician or accoucher in attendance, then such births or deaths shall be reported by the householder where, or under whose observations, such birth or death may occur, with the cause of death, if such be known. Any death coming under the jurisdiction or supervision of any coroner, shall be by him reported to the secretary of the board of health of the town, city or

county, in which such death may occur, and such death so reported shall not be required to be reported by any other person.

Sec. 4996. Duties of clerk. 11. It shall be the duty of the clerk of the circuit court, of each county, to report to the secretary of the county board of health, on or before the fifth day of each month, the number of marriages for the preceding month, with such facts relating thereto as may be provided for by a blank furnished to such clerk by the secretary of the county board of health.

Sec. 4997. Records—Forms—Blanks. 12. It shall be the duty of all boards of health to keep a complete record, according to the forms prescribed by the state board, of all marriages, births and deaths reported to them under the provisions of this act, and such record shall be open to the inspection of any citizen without fee. It shall be the duty of the state board of health to prescribe the forms for the records of marriages, births and deaths to be used in the office of the secretary of the county board, and prescribe such forms, and the secretary of the state board shall, upon requisition of the health officer of each county, furnish him, and through him the secretary of each local board in such county, such blanks as may be required for the gathering and reporting of vital and sanitary statistics according to the provisions of this act.

Sec. 4998. Annual appropriation. 13. The sum of five thousand dollars per annum, or so much thereof as may be necessary, is hereby appropriated to pay the salary of the secretary and other necessary expenses of the state board of health, according to the provisions of this act; and the expenses of the state board of health shall in no event exceed the amount herein appropriated.

Sec. 4999. Misdemeanor. 14. Any person or persons, or the officers of any corporation, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred dollars.

Sec. 5000. Repealing clause. 15. All laws and parts of laws in conflict with this act are hereby repealed.

CHAPTER LXX.

HIGHWAYS.

ART.

3. General provisions.

ARTICLE 3—GENERAL PROVISIONS.

SEC.
5040. Petition by abutting owners.
5041. Action on petition.
5042. Power of petitioners.
5043. When petitioners may incorporate.
5044. Rights of such corporation.

[1881 S., p. 542. Not approved, but went into force September 19, 1881.]

SEC. 5040. Petition by abutting owners. 1. Owners of real estate abutting upon any street, alley, or highway in this State may petition the proper authorities of the town or city, or the board of county commissioners of the county where the street, alley, or highway may be located, to grant right of way for the improvement of such street, alley, or highway.

This section does not give the board of county commissioners power to grant a right of way for the improvement of a street, alley or highway in a town or city in the county; within the city the common council, and within the town the board of trustees, have exclusive authority and control over the streets, alleys and highways.

SEC. 5041. Action on petition. 2. When such petition has been signed by persons of lawful age who are the owners in fee-simple of more than half the real estate abutting upon any street, alley, or highway in this State (if the petitioners are also a majority of those who own such real estate), it shall be the duty of the proper officers of the town or city where such street or alley may be situated, or of the board of county commissioners of such county where such highway may be located, to grant right of way for such improvement.

It would seem that the grant can be conferred only of an entire street or alley, and not of a part of it

Petition.

To the Common Council [or, *Board of Trustees*] *of the city* [or, *town*] *of* ——:

The undersigned, all persons over the age of twenty-one years and the owners in fee-simple of more than one half of the real estate abutting upon

Pike street, and also a majority in number of all those who own real estate so abutting on said street, pray that you will grant to them the right of way over said street for the improvement thereof, under an act of the general assembly of the State of Indiana, entitled "An act allowing owners of real estate to petition for the improvement of streets, highways, etc., to obtain right of way for such, and for the organization of road corporations," of the acts of 1881.

[Signed.]

Journal Entry.

Whereas, A. B. and others, more than one half of the owners of the real estate abutting upon Pike street of this city [*or*, town], who are of lawful age and who are also a majority of all those who own real estate abutting on said street, have petitioned this common council [*or*, board of trustees] to grant them the right of way over said street for the improvement of the same, under an act of the general assembly of the State of Indiana, entitled "An act allowing owners of real estate to petition for the improvement of streets, highways, etc., to obtain right of way for such, and for the organization of road corporations," of the acts of 1881; therefore,

It is ordered that the right of way over said Pike street be and the same is hereby granted to said A. B. and said others, under the provisions of said recited act of the general assembly of this State, for the purpose of improving the same. Said improvement shall be done under the supervision of the city [*or*, town] civil engineer, and shall be done according to the following specifications, to wit: [*Give them in detail.*]

Sec. 5042. Power of petitioners. 3. When any right of way has been granted for the improvement of any street or alley, the persons who have signed the petition for such improvement may proceed, under the supervision of a competent civil engineer, to be employed by the town or city where the same is located, to grade and pave or gravel such street or alley.

The city or town does not lose its control over the street by granting the right of way to petitioners.

Sec. 5043. When petitioners may incorporate. 4. When right of way has been granted by the board of county commissioners for the improvement of any highway in this State, the petitioners and others interested in such highway may form themselves into a corporation, under the laws of this State, to build a free or toll road, as may to them seem best.

A corporation can not be formed under the general gravel road laws to build a toll road within a city or town.

Sec. 5044. Rights of such corporation. 5. A corporation formed under this act shall have all the rights and privileges of other similar corporations in this State.

CHAPTER XCVI.

PRISONS.

ART.
5. *The Work-house.*
6. *The Home for Friendless Women.*

ARTICLE 5—THE WORK-HOUSE.

SEC.
6227. County board may establish.
6228. Superintendent.
6229. Commitment.
6230. Transfer from jail.
6231. Prisoners kept at labor.
6232. Cities and towns may commit.
6233. Quarterly reports—Receipts—Expenses.
6234. Inspection by grand jury.
6235. Visitation.
6236. Duties of county physician and superintendent.
6237. Use of city or town work-house.
6238. Punishment of prisoners.
6239. Credit for work.

[1879 S., p. 247. Approved March 31, 1879, and in force May 31, 1879.]

SEC. 6227. County board may establish. 1. It shall be lawful for the board of commissioners of any county in this State, in its discretion, whenever it shall deem it advisable, to use property then owned by it, or to purchase or provide a tract of land, in the name of the county, and thereon to establish and maintain a work-house —the expense to be paid out of the general fund of the county.

SEC. 6228. Superintendent. 2. When such work-house is established in any county, the board of commissioners thereof shall employ some proper person, to be called the "Superintendent of the County Work-house," to take charge of the same upon such terms, and under such restrictions, rules, and regulations as such board may from time to time adopt: *Provided*, That if the work-house be established upon the county poor farm, then the superintendent of the county asylum may be required to take charge and control of the work-house.

SEC. 6229. Commitment. 3. When such work-house is ready for occupancy, the board of commissioners shall give notice thereof, by an order entered upon its records and such other notice as it may deem proper; and, thereupon, any court, judge, mayor, magistrate, justice of the peace, or other officer, may sentence any person to the county work-house instead of the county jail; which fact shall be stated in the record of the judgment, and set forth on

the face of the *mittimus* or other writ issued to the officer whose duty it may be to execute the same. In every such case, such officer shall deliver such person to the superintendent of the county work-house, who shall receive the prisoner, and hold and restrain him of his liberty for the period he may have been sentenced by such court, unless sooner released by a pardon, remission, or the judgment of a proper court: *Provided*, That in all cases of commitment to such work-house, the judge, mayor, magistrate, or justice of the peace, who made such commitment is authorized and empowered to remit the penalty imposed by him, for good cause shown.

Sec. 6230. Transfer from jail. 4. Whenever any person shall have been sentenced to imprisonment in the county jail, he may be transferred to the work-house at any time during the period of his imprisonment, under such orders, rules, and regulations as the board of commissioners of such county may, from time to time, adopt; which orders, rules, and regulations, when adopted, the sheriff, jailer, or other person having the custody of the county jail, shall obey; and for his neglect or refusal to so obey, he shall be fined by any court of the county having criminal jurisdiction, in any sum not less than fifty dollars, to which may be added imprisonment in the work-house not exceeding sixty days.

Sec. 6231. Prisoners kept at labor. 5. All prisoners and other persons held in the work-house shall, as far as may be consistent with their age, sex, and ability, be kept at hard labor in such manner as the board of commissioners shall deem most advantageous to such county, and under such rules and regulations as such board may, from time to time, prescribe—such labor to be performed in or about the work-house, or upon any public wharf, street, alley, highway, or thoroughfare within the county, or upon any other work or public improvement which such board may deem for the welfare of the citizens of such county, or at such other labor, and in such manner, as such board may deem best. Such work shall be done under the direction and supervision of the superintendent of the work-house; and for this purpose, the board of commissioners may meet; at any time, and make all proper orders, which shall be spread upon the records of such court.

Sec. 6232. Cities and towns may commit. 6. Any person sentenced to imprisonment, or committed for a failure to pay or replevy any fine, forfeiture, and costs, under any ordinance or law of any town or city in such county having a work-house established, may be committed to such work-house, under such contracts and agreements as such town or city and the board of commissioners of such county may, from time to time, make. Such prisoners, at all times, shall be subject to the rules and regulations adopted for the conduct and management of the work-house.

Sec. 6233. Quarterly reports—Receipts—Expenses. 7. The superintendent of the work-house shall make a detailed report, in writing, to the board of county commissioners, on the first day of each regular term of such court, showing the income received and the expense incurred for the last preceding quarter. All sums received by the superintendent, from any and every source, shall be paid by him to the county treasurer, who shall give him a receipt therefor, to be retained by him, and a duplicate thereof, which said superintendent shall file with said report. All expenses incurred shall be paid by the treasurer out of the county funds, on a proper warrant drawn by the auditor, on the order of the board, as in other cases, and not otherwise. All moneys so received or paid out by the treasurer shall be paid into and out of the general county fund. Such treasurer and auditor shall each keep an accurate account of the income and outlay, to be known as the "County work-house account."

Sec. 6234. Inspection by grand jury. 8. The grand jury, at each term of the court of such county for which they are sitting, shall make personal inspection of the condition of the work-house, as to the sufficiency of the same for the safe-keeping of prisoners, their convenient accommodation and health, the manner in which the same has been kept, and how the prisoners have been kept at labor since the last term. They shall further inquire as to the income received and expense incurred since the last term; may examine the books and papers of the work-house, and the records and files of any county officer or officers; and may send for books and papers anywhere within the State. The foreman may administer all oaths necessary in making such inquiries; and for any refusal to attend or testify, the court for which they are sitting may punish the offender for contempt, in the manner provided by law. Such grand jury shall make report, in writing, to the court for which they are sitting; which shall be spread upon the records thereof, and a duplicate shall be filed with the board of commissioners at their next session. And such board shall consider all complaints and recommendations of the grand jury, and obey the same, or place on record their reasons for not so doing.

Sec. 6235. Visitation. 9. The members of the board of commissioners, and any judge, magistrate, or justice of the peace of such county, or mayor of any town or city having the right to commit prisoners to the work-house, may visit the same at any time, or the prisoners wherever they may be at work, for the purpose of determining whether the rules and regulations made for the management of said work-house and prisoners are duly enforced.

Sec. 6236. Duties of county physician and superintendent. 10. The county physician shall visit the work-house when required by the superintendent. The superintendent shall give bond, with

security, for the faithful performance of his duties, to be approved by the board of county commissioners. He, and his subordinates having charge of the prisoners, shall have the right to enforce discipline and obedience of all orders, rules, and regulations made for their government, and arrest any escaped prisoner, wherever found within the State, and conduct him to the work-house.

SEC. 6237. Use of city or town work-house. 11. In case there is a work-house in any county owned and maintained by any town or city within such county, it shall be lawful for the board of commissioners of such county to provide, by written contract with such town or city, for the custody and maintenance of any or all able-bodied persons sentenced to confinement within the county jail, and to provide for their removal to and confinement in such work-house. And the sheriff, jailer, or other person having the custody of the jail, shall obey, carry out, and perform all orders, rules, and regulations of the board made in pursuance of such agreement. For any neglect or refusal, he shall be subject to the like penalties provided in section four of this act [§ 6230].

SEC. 6238. Punishment of prisoners. 12. Any person sentenced to or held in the work-house, who, being physically able to work, refuses to work, may be subjected to physical punishment, under such rules as the board having control of the work-house may adopt; and may be confined in solitary confinement, or fed on bread and water only, until he consent to work.

SEC. 6239. Credit for work. 13. Any person held in or committed to the work-house for a failure to pay any fine or costs shall be required to work as provided for by the provisions of this act, and credited on such fine and costs at the rate of one dollar per day for each day's work. But if such person refuse to work, then, for each day he shall so refuse, he shall not be entitled to receive any credit, and he may also be punished as provided for in this act.

ARTICLE 6—THE HOME FOR FRIENDLESS WOMEN.

SEC.		SEC.	
6240.	When females may be sentenced.	6244.	Fines for gambling.
6241.	Trustees to enforce judgment.	6245.	Proceeds of forfeited recognizances.
6242.	Inspection.	6246.	Mayor's accounts—Statements.
6243.	Fines for lewdness.	6247.	Reports.

[1867, p. 228. Approved and in force March 11, 1867.]

SEC. 6240. When females may be sentenced. 1. When any city, or private corporators, or other persons, shall have established in this State a home for friendless women upon principles of protection and reformation of abandoned or erring women, which, in the opinion of the board of county commissioners of the county in which such home is situated, duly recorded, after examination, is

in a condition to provide for and restrain of liberty any one committed to their charge, on conviction of any woman or girl of any crime or misdemeanor or violation of any city ordinance, in any of the superior or inferior courts of the State or of any city therein, the punishment whereof shall be imprisonment at hard labor or otherwise, the court may, in its discretion, and with the consent of the trustees or acting authorities of such home for friendless women, and with a view to reformation as well as punishment, order the imprisonment to be made and done in such home for friendless women; and such imprisonment shall be held as legal and rightful, or as if made in any state prison or in any county or city jail in the State. The mayor or city judge of any incorporated city may sentence and commit such persons, on conviction, to such home, for the same period of time that a circuit court could do for a like offense.

SEC. 6241. **Trustees to enforce judgment.** 2. The trustees, managers, or other authorities of such home for friendless women, shall, in all things, be governed by the laws of the State in making such imprisonment at hard labor, solitary confinement, or otherwise, as shall be adjudged by the court on any such conviction or convictions.

SEC. 6242. **Inspection.** 3. Any such home for friendless women shall, at all reasonable hours, be open for the inspection of any such court or any grand jury, the governor, any state officer, any committee of the general assembly of the State, the council of any city, or the board of commissioners of the county in which it is situate.

[1873, p. 141. Approved and in force February 26, 1873.]

SEC. 6243. **Fines for lewdness.** 1. In all incorporated cities of this State where there is now or shall hereafter be established an incorporated home for friendless women, incorporated under the laws of this State, all fines and penalties assessed and collected by the mayor or other judicial officer of such city for the breach of any ordinance of such city in relation to houses of prostitution, or in relation to the keepers, frequenters, or inmates thereof; or for the breach of any ordinance of such city for the suppression of vice or immorality, or for the suppression of houses of ill-fame, or for the punishment of the keepers, frequenters, or inmates thereof, when so collected, shall be paid over to the board of trustees of such home for friendless women in such city, to be applied to defraying the current expenses of such home.

SEC. 6244. **Fines for gambling.** 2. In all incorporated cities of this State where there is or shall be established a home for friendless women, as described in the preceding section, all fines and penalties imposed or assessed and collected by the mayor or

other judicial officer of such city for the breach of any ordinance against professional gambling, or against gaming or gambling of any kind; or against the keepers of gambling houses, or the frequenters or inmates thereof, when so collected, shall be paid over by the city authorities to the board of trustees of such home for friendless women in such city, for the purposes specified in the last section.

SEC. 6245. Proceeds of forfeited recognizances. 3. Whenever any person shall be arrested for the breach of any of the ordinances mentioned in either of the two foregoing sections, and shall give a bond or recognizance, with or without security, conditioned for his appearance before the mayor or any other judicial officer having jurisdiction to try the case, to answer the charge, and such bond or recognizance shall be forfeited, such forfeiture, when collected, shall be paid to the trustees of the home for friendless women which may then exist in such city as aforesaid.

SEC. 6246. Mayor's accounts—Statements. 4. The mayor, or other officer collecting any fines contemplated by this act, shall keep a separate account thereof; and, at the end of each period of three months from and after the taking effect of this act, such mayor or other officer shall pay the amount, so collected during the preceding three months, into the city treasury, for the use of the trustees of such home for friendless women; and said mayor shall, at the same time, make a detailed statement to the city council, showing the amount that has been so paid into the city treasury, on what account collected, and that it belongs to the said trustees under the provisions of this act; and, thereupon, the common council of such city shall make an order for the payment of the same to said trustees, for the purposes aforesaid, and the same shall be paid accordingly.

SEC. 6247. Reports. 5. It shall be the duty of the trustees of such home for friendless women, on or before the tenth day of January of each year, to make a detailed report to the common council of such city of the operations and business affairs of such home, with a statement of the receipts and expenditures thereof, and such other matters as are usually embraced in reports of kindred institutions, for the year ending on the thirty-first day of the preceding December.

This and the two preceding sections are constitutional, 50 Ind. 215.

CHAPTER XCVIII.

TAXATION.

ART.

1. *What Assessed.*
2. *What Exempted.*
3. *When Assessed.*
4. *Who Shall List.*
5. *Where Assessed.*
6. *Definitions and Rules.*
7. *Manner of Listing Personalty.*
8. *Banks and Bankers.*
9. *Foreign Corporations.*
10. *Domestic Corporations.*
11. *Railroads.*
12. *Building Associations.*
13. *Duties of Township Assessor.*
14. *County Board of Review.*
15. *State Board of Tax Commissioners, etc.*
16. *Duties of County Auditor.*

ART.

17. *Duties of County Treasurer.*
18. *Levy and Sale of Personalty.*
19. *Proceedings against Corporations.*
20. *Collections from Persons Removed and Fiduciaries.*
21. *Lien of Taxes and their Payment.*
22. *Assessments by Treasurer.*
23. *Collection by Sale of Realty.*
24. *Redemption of Realty.*
25. *Conveyance of Realty.*
26. *Collection from Unsold Realty.*
27. *Tax-titles.*
28. *Treasurer's Settlements and Defaults.*
29. *General Provisions.*

ARTICLE 1—WHAT ASSESSED.

SEC.

6269. Polls and property.
6270. Poll-tax.

SEC.

6271. Property taxable.
6272. "Realty" and "personalty" defined.

[1891 S., p. 199. Approved and in force March 6, 1891.]

SEC. 6269. Polls and property. 1. All taxes for the support of the government of this State shall be assessed on polls and on property listed and valued in an equal and ratable proportion (except such stocks and other property as may be specifically taxed) in the following manner, namely: The amount necessary and proper to be charged on each poll and on each hundred dollars' worth of property, for state expenditures and for school purposes, shall, from time to time, be fixed by law; and the amount to be charged on each poll and on each one hundred dollars' worth of property for county expenditures shall be determined by the board of county commissioners at their annual meeting in September. (1.)

1. By an express provision of this tax law it is made applicable to cities. See §§ 3160 and 6521*a*. By a separate law it is made applicable to both cities

and towns, § 3263. Some of the sections, and parts of sections of this act, are not applicable to either a city or town, because of their non-applicability. But wherever applicable this law repeals the tax laws especially adopted for cities and towns; and the provisions of this act should be followed instead of those acts.

2. So far as they could be used the *sectional numbering* of the Revised Statutes of 1881 have been retained; and where an omission occurs it is because the tax law of 1891 contains no corresponding section. At the end of each section is inserted the number of the corresponding section of the tax law of 1881, as published in the acts of that year.

Some of the taxes levied by the board of county commissioners are as follows: Tax to pay county bonds, and to provide a sinking bond therefor, R. S. 1881, § 5753. Tax to pay interest on bonds, R. S. 1881, § 5754; to build a county poor asylum, R. S. 1881, § 6093; poor tax, R. S. 1881, § 6099; township and road tax, R. S. 1881, § 5995; free road tax, Acts 1889, p. 372; El. Sup. §§ 2184 to 2188; purchase of turnpike, Acts 1889, p. 276; El. Sup. § 1460; Acts 1885, p. 209; El. Sup. § 1452; bonds for court-house, Acts 1883, p. 70; El. Sup, § 1936; Acts 1889, p. 27; El. Sup. § 1938; tax for colleges, Acts 1889, p. 429; El. Sup. § 1940; tax for high schools, Acts 1889, p. 400; El. Sup. § 1944; railroad tax, §§ 4056, 4086; special school tax, § 4468; limitation of taxation, Acts 1889, p. 306; El. Sup. §§ 2138 and 2139; Acts 1885, p. 96; §§ 2135 to 2137.

3. The following are some of the township levies: Library tax, § 3805; drainage repair tax, Acts 1883, p. 180; El. Sup. § 1181; special school tax for school-houses and supplies, § 4467; local school tax for tuition, § 4469; special school tax for debts, § 4471; road tax, Acts 1883, p. 68, § 20; El. Sup. § 1562.

4. Levies in cities and towns can be found by the use of the index.

5. "The word tax means burden, charge or imposition put or set upon persons or property for public uses," 27 Ind. 62.

6. The constitution provides that "the general assembly shall provide by law for a *uniform and equal* rate of *assessment* and *taxation*, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal," § 193. This, it has been held, does not require that the rate of assessment shall be uniform and equal for all purposes throughout the State; but it does mean that the rate of assessment and taxation shall be uniform and equal throughout the locality in which the tax is levied. Therefore a tax for road purposes assessed upon real estate only is repugnant to this section, 27 Ind. 223; see 5 Ind. 557; 9 Ind. 174; 11 Ind. 139; 34 Ind. p. 229; 37 Ind. 155; 44 Ind. 83. "To be sure, state taxes must be uniform throughout the county, the city taxes throughout the city. But city taxes need not be uniform throughout the different cities. It is sufficient if the taxes of a city are uniform throughout that city," 39 Ind. p. 432; 48 Ind. 568; 85 Ind. 341; 22 Ind. 204.

7. But the specific tax upon *dogs* is upheld on another ground, that it is not a revenue measure, but a police regulation, 79 Ind. p. 12; 27 Ind. 223; 27 Ind. 62; 27 Ind. 120; 27 Ind. 494.

8. Laws to pay *military bounties* are constitutional, 28 Ind. 161, *railroad aid bonds*, 34 Ind. 185. See § 3152, *notes*.

9. The fact that public officers contemplate an *unlawful use* of the county revenue will not render void a general levy for county purposes, 28 Ind. 161.

10. Laws concerning *assessments* for *street improvements* are not subject to the same restrictions that the constitution imposes on tax laws, 29 Ind. 329. Thus assessments for *free gravel roads* are not governed by the laws and principles applicable to taxation in general, 30 Ind. 77; and so *drainage laws*, 14 Ind. 199. *Streets* and highways may, however, be constructed with a general tax authorized by legislature, 30 Ind. 77. Such laws for local assessments are constitutional, 32 Ind. 37; 32 Ind. 325; 30 Ind. 77; 14 Ind. 199; 26 Ind. 119; 29 Ind. 329; 37 Ind. 155 (Purdue University).

11. Taxes assessed or levied that are not authorized may be *enjoined*, 92 Ind. 222; 29 Ind. 533; 76 Ind. 68; but if part are legal and part illegal the person asking an injunction must first pay or tender or offer to pay those that are due

and legal, 24 Ind. 409; 32 Ind. 27; 61 Ind. 29; 69 Ind. 344; 99 Ind. 352; 59 Ind. 61; 71 Ind. 281; 121 Ind. 416. Mere irregularities in the assessment is not sufficient ground for an injunction, 59 Ind. 61. An illegal assessment of personal property may be enjoined, 92 Ind. 222 (see 59 Ind. 61, 400); 76 Ind. 68, 130. A double assessment can not be enjoined until one is paid, 121 Ind. 416.

12. A township trustee may be compelled by *mandate* to levy a tax to pay a debt, 25 Ind. 486; and so may a board of county commissioners, 86 Ind. 8, or a city or town, 86 Ind. 17.

13. "Taxes are *public burdens*, of which every individual may be compelled to bear his part, and that in proportion to the extent of protection he receives, or the amount of property held by him, as the will of the legislature may direct. We know of *no limits* within which the power of taxation can be judicially restrained, so far as regards the different kinds of property to which it may be applied, or the tenure under which such property is held. The power of taxation is said to be an incident of sovereignty, and co-extensive with that of which it is an incident. In the several States of this Union it extends to all subjects over which their sovereign power extends, and the sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission. It can not be material, therefore, whether these lands be held by legal or *equitable titles*, or whether they were sold by the State or by individuals, so far as regards the power of the State to tax them," 8 B. 352; 14 Ind. 354.

The right of the State to impose taxes upon its citizens does not rest upon a contract, and is only *limited* by the fundamental law of the State, 22 Ind. 204; 8 B. 352.

14. The power of taxation exists in the state governments *concurrent* and *co-extensive* with that of the general government (except concerning imports and exports), and has for each the limit that neither may tax the legitimate machinery or agencies employed by the other in the exercise of its governmental powers and functions. Consequently a federal statute requiring process from courts to bear a *stamp* was held unconstitutional, 32 Ind. 1.

Sec. 6270. Poll tax. 2. A poll tax shall be assessed upon every male inhabitant of this State between the ages of twenty-one and fifty years; and every person shall be listed for his poll tax in the township, town or city of his residence. (2.)

1. City poll tax, § 3156; town poll tax, § 3333, cl. 15. The board of county commissioners may exempt from the payment of his poll tax any person unable to pay it. R. S. 1881, § 5808.

2. Real estate is liable for the poll tax assessed against the owner thereof, although his title be extinguished afterward by the foreclosure of a mortgage thereon of older date than his purchase, 41 Ind. 410; 40 Ind. 353. See § 6447.

Sec. 6271. Property taxable. 3. All property within the jurisdiction of this State, not expressly exempted, shall be subject to taxation. (3.)

1. The word "*residing*," in the act of 1881, had reference to a fixed and permanent domicile, and not to a temporary or transitory residence. Thus a person having for many years, prior to August, 1870, a domicile in this State, owning at his place of domicile a dwelling-house, rented such house, with its furniture, for an indefinite time, three months' notice being required to terminate the lease, and, with his family, went to Europe, with the intention of ceasing to become a resident of this State for an indefinite time, but with the expectation of again becoming a citizen of Indiana at some indefinite time in the future, in probably two or three years In November, 1872, he, with his family, returned from Europe, where they had lived in the meantime, to Indiana, and resumed possession of the dwelling-house, and continued there to reside. It was held that he was taxable for the years 1871 and 1872, as a person "residing in this State," 52 Ind. 361.

2. This section is *constitutional*, 14 Ind. 354. Concerning property in *transitu*, see § 6292. Personal property *defined*, § 6273. Realty *defined*, § 6272.

3. *Notes* and choses in action placed in the hands of an attorney in this State for collection simply, and municipal *bonds* placed temporarily on deposit in a bank in this State, merely for safe-keeping, and belonging to a *bona fide* resident of another State, are not liable for taxation. So such property belonging to and in possession of a resident of another State, who is traveling through or *temporarily* sojourning in this State, is not liable to taxation, 59 Ind. 472.

SEC. 6272. Realty and personalty defined. 4. For the purpose of taxation, real property shall include all lands within the State, and all buildings and fixtures thereon and appurtenances thereto, except in cases otherwise expressly provided by law; personal property shall include all goods and chattels within the State, all ships, boats and vessels belonging to inhabitants of this State, whether at home or abroad, and their appurtenances; all goods, chattels and effects belonging to inhabitants of this State, situate without this State, except the property actually and permanently invested in business in another State shall not be included; all indebtedness due to inhabitants of this State above the amounts respectively owed by them, whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State; all shares in corporations organized under the laws of this State, when the property of such corporation is not exempt or is not taxable to the corporation itself; all shares in banks organized in this State under any law of the United States, but in estimating the value of such shares, deduction shall be made of the value of all real estate taxed to the bank; all shares in foreign corporations, except national banks, owned by inhabitants of this State; all moneys; all annuities, and royalties; all interests owned by individuals in lands the fee of which is in this State or in the United States, except as hereinafter provided. Property exempted from taxation by the laws of the United States shall not be included. Shares in corporations, all the property of which is taxable to the corporation itself, shall not be assessed to the shareholder. Lands sold by the State, including lands forfeited to the sinking fund, university fund, and all other trust funds, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed. All lands reserved to or for any individual by any treaty between the United States and any Indian tribe or nation shall be liable to taxation from the time such treaty shall have been confirmed. (4.)

1. This section is constitutional, 14 Ind. 354. It does not apply to the stock of a foreign corporation, 47 Ind. 511; unless owned by a citizen of this State, 79 Ind. 351. "Money at interest," as used here, does not mean accounts and choses in action drawing interest, but money loaned, 107 Ind. p. 212. Shares of stock are personal property, 79 Ind. 351. The word "credits" is such as the law recognizes and enforces, in existence on April 1, but not such as is created after that date, 33 Ind. 386.

2. Formerly the title of the *mortgagor* to land by him mortgaged to the commissioners of the *sinking fund* to secure a loan and sold by them, vested in

the purchaser freed from all assessments and taxes made or levied between the date of the mortgage and the date of the deed, 1 Ind. 128. This is where they were bid in by the State and resold; but if bid in by a stranger he took them subject to the assessments and taxes, 24 Ind. 255. School lands, § 6519; 53 Ind. 60; 57 Ind. 96; 58 Ind. 244; 49 Ind. 272.

3. Former decisions *on Indian lands*, 5 B. 409; 36 Ind. 310. This section is valid, and any one claiming that lands of this character are exempt from taxation must affirmatively show it, 63 Ind. 497.

ARTICLE 2—WHAT EXEMPTED.

SEC.		SEC.	
6276.	Public, educational, and religious property.	6278*a*.	Legacies exempt from taxation.
6278.	Endowments of colleges, etc.	6278*b*.	Miami Tribe of Indians.
		6278*c*.	Action to quiet title.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6276. Public, educational, and religious property. 5. The following property shall be exempt from taxation:

First. The property of the United States and of this State.

Second. The property of any county, city or town, or township.

Third. All lands granted for the use of the common schools, so long as the same shall remain unsold.

Fourth. The personal property and real estate of every manual labor school or college incorporated within this State, when used or occupied for the purpose for which it was incorporated; such real estate not to exceed three hundred and twenty acres.

Fifth. Every building used and set apart for educational, literary, scientific, or charitable purposes, by any institution, or by any individual or individuals, association, or incorporation, or used for the same purpose by any town, township, city, or county, and the tract of land on which such building is situate, also the lands purchased with the *bona fide* intention of erecting buildings for such use thereon, not exceeding forty acres; also the personal property, endowment funds, and interest thereon, belonging to any institution, town, township, city, or county, and connected with, used, or set apart for any of the purposes aforesaid.

Sixth. Every building used for religious worship, and the pews and furniture within the same, and also the parsonage attached thereto and occupied as such, and the land whereon such building or buildings are situated, not exceeding ten acres, when owned by a church, or religious society, or in trust for its use; also every cemetery. (8.)

1. *Church* property exempt from state and county taxes is also exempt from municipal taxes, but may be liable for *assessments* for street improvements and sewers, when so made by statute, 36 Ind. 338; § 193.

2. A *parsonage* erected for the convenience and accommodation of the pastor of a church was formerly not exempt from taxation, 38 Ind. 3.

3. Exemptions from taxation are to be *strictly construed*, 8 Ind. 328; 38 Ind. 3; 18 Ind. 33. Perhaps a more liberal construction would be required in favor of literary and scientific institutions, 25 Ind. 518; § 193.

4. The word "*institution*," in the fifth specification, means a permanent establishment, as contradistinguished from an enterprise of a temporary character, 24 Ind. 391.

5. The exemption of the *ten acres* is not intended to include any part of the land which is diverted to secular use for gain, 4 Ind. 86.

6. A former law giving an exemption to *unmarried females* was held unconstitutional, 69 Ind. 375; 75 Ind. 309.

7. Formerly lands purchased of the United States were exempt for five years from date of purchase, 20 Ind. 416; 5 McLean, 385.

8. The legislature has the power to exempt certain property from *municipal* taxation, 40 Ind. 491; 11 Ind. 139; 27 Ind. 332; 17 Ind. 48; 3 Ind. 43; 6 B. 349; 7 B. 395.

9. *Greenbacks*, or legal tender notes, are exempt from taxation, 59 Ind. 460; 55 Ind. 433; 32 Ind. 27; so United States *bonds*, 21 Ind. 261; 27 Ind. 338.

10. A private *boarding school*, whether incorporated or not, is not exempt, 8 Ind. 328; but see 24 Ind. 371. *Masonic building* held exempt though part of it is rented out, 25 Ind. 518.

11. The property of the *state board of agriculture* is exempt from taxation, R. S. 1881, § 2622.

[1881 S., p. 481. Approved and in force April 15, 1881.]

SEC. 6278. Endowments of colleges, etc. 1. No taxes shall be assessed or collected for the year 1880, or for any preceding year, under any provision of the act approved December 21, 1872, entitled "An act for the uniform assessment of property, and for the return of taxes thereon"; on the endowment funds of any literary, scientific, benevolent, or charitable institution, whose building and personal property are exempted from taxation by the seventh section of said act, nor upon any income or profits arising therefrom for the use and benefit of said institution; but all such endowment funds, and all interest and profit thence arising, shall be deemed and taken to have been exempted from taxation from and after the passage of said act.

See § 193.

[1883, p. 47. Approved and in force February 27, 1883.]

SEC. 6278*a*. Bequest, when exempt from taxation. 1. When any literary, scientific, benevolent, or charitable institution is the specific or residuary legatee of any devise or bequest, any money or choses in action going to or belonging to any of said institutions, shall not, while the same was in the hands of the executors, be liable to taxation, and no taxes shall be collected thereon for the year 1881, or any preceding year, but the same shall be taken and deemed to have been exempt from taxation. [El. Sup. § 2103.]

See § 3072.

[1891, p. 115. Approved and in force March 5, 1891.]

SEC. 6278*b*. Miami tribe of Indians. 1. It shall be unlawful for any state, county or municipal officer to assess, place upon any tax duplicate, advertise or offer for sale, or sell for purported assessments thereon, any land in Indiana included within a grant to

any member of the Miami tribe of Indians, made by the United States under a treaty with such tribe from lands in such treaty ceded by said tribe: *Provided*, The then owner of such land is not a citizen of the United States and is a descendant or member of the family of such grantee, and that such grantee was, by treaty between the United States and such tribe, permitted to remain with his family in Indiana when said tribe removed from the State, and that such owner or his ancestors subsequent to the removal of said tribe from Indiana was, in said State, enumerated and paid by the United States as a member of said tribe, and that such lands have not been in the adverse possession of any person not a member of said tribe and descendant of said original grantee under a conveyance executed by such an owner.

SEC. 6278*c*. Action to quiet title. 2. Whenever such land so owned has been or may be assessed or placed upon any tax duplicate for taxation, any such owner or owners or their assigns may institute suit in the circuit court of the county, wherein such land is found, against the board of commissioners, auditor and treasurer of such county to relieve such land from the cloud on the title thereto created, while so owned, by such assessment or placing the same on any tax duplicate, and by any purported sale thereof based thereon; and such court shall, upon complaint containing facts establishing the existence of all the conditions in section one of this act set forth as to character of lands therein described and ownership thereof, have jurisdiction to finally determine the rights of the State of Indiana, and any public corporation therein as well as of any person properly made defendant in such suit, and render judgment accordingly in favor of plaintiff if such complaint be true: *Provided*, This act shall not affect any suit now docketed in any court in this State.

ARTICLE 3—WHEN ASSESSED.

SEC.
6280. Chattels, from April first to June.
6281. Owner on April first liable.
SEC.
6282. Executors and administrators.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6280. Chattels, from April first to June. 8. Personal property shall be listed for taxation between the first day of April and the first day of June, each year; and, with reference to the quantity and quality held or owned, on the first day of April in the year for which the property is required to be listed. (11.)

Property coming into existence after April 1, and before the owner thereof is assessed, can not be listed for that year, 17 Ind. 48; 48 Ind. 568. Formerly property within a city was listed on and after June 1; but the fact that property was listed in the country after April 1, and then, before June 1, the owner moved into a city, did not prevent the city assessing him with such property for that year for city taxes, 55 Ind. 210.

Sec. 6281. Owner on April first liable. 9. The person purchasing or acquiring property, whether real or personal, on the first day of April in any year shall be considered as the owner on that day, and shall be assessed and liable for the taxes of that year. (12.)

1. As to a valid *transfer* of real property for taxation and personal liability for the tax, see 71 Ind. 281.

2. No *contract* by which a liability is created after April first can relate back so as to make the creditor liable to be taxed for that year for such demand, 33 Ind. 386.

Sec. 6282. Executors and administrators. 10. If a person die after the first day of April, without having given in the amount of his taxables, his executor or administrator, heir-at-law, or other person having charge thereof, shall give in the same as though such property had been in his possession on the first day of April of such year. (13.)

ARTICLE 5—WHERE ASSESSED.

SEC.
6290. Personalty in township—Exception.
6291. Corporate property.
6291*a*. Copartnership.
6292. Property *in transitu*.
6293. Water craft.
6294. Banks—Brokers—Stock-jobbers, etc.
6295. Gas, water, and hydraulic companies.
6296. Road and bridge companies.
6297. Principal and agent.
6298. Person removing.
6298*a*. Realty—Fiduciaries.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6290. Personalty in township—Exception. 11. All personal property shall be assessed to the owner in the township, town or city, of which he is an inhabitant on the first day of April of the year for which the assessment is made, with the following exceptions: (21.)

First. All goods and chattles situated in some township, town or city, other than where the owner resides, shall be assessed in the township, town or city where situated, and not elsewhere if the owner or person having control thereof hires or occupies a store, mill, dock yard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory or warehouse therein, for use in connection with such goods and chattels: *Provided*, That the procuring any such property to be manufactured upon contract, shall be deemed the hiring of a mill or manufactory, within the meaning of this section. (16.)

Second. All animals kept throughout the year in some township, town or city other than where the owner resides, shall be assessed to such owner, or the person in possession in the township, town or city where kept.

Third. All shares in banks shall be assessed to their owners in the city or town where the bank is located.

Fourth. Personal property of non-residents of the State shall be assessed to the owner or to the person having the control thereof

in the township, town or city where the same may be, except that where such property is in transit to some place within the State, it shall be assessed in such place.

Fifth. The personal property of minors under guardian shall be assessed to the guardian in the township, town or city where the guardian resides, but shall not be assessed or taxed for city or town purposes unless the ward reside in such city or town, and the personal property of every other person under guardianship shall be assessed to the guardian in the township, town or city where the ward resides.

Sixth. The personal property of the estates of deceased persons, in the hands of executors, administrators or other persons shall be assessed to the persons in charge of such property in the township, town or city where the deceased last dwelt, until such property has been distributed to the heirs or other persons entitled thereto. If such decedent was a non-resident of the State, such property shall be assessed in the township, town or city where situated. (19.)

Seventh. Personal property under the control of a trustee or agent, whether a corporation or natural person, may be assessed to such trustee or agent, except as otherwise by law provided in the township, town, or city in which such trustee or agent resides.

Eighth. All personal property of any person situate upon, also all buildings situate and being upon the land of the United States, or of this State, or upon the lands of any county, township, town, or city, shall be deemed personal property for purposes of taxation and assessment, and shall be assessed as personal property to the owner or occupant thereof, in the township, town or city, to which said lands belong or of which they form a part, and such buildings shall be subject to sale for taxes in the same manner as herein provided for personal property: *Provided, however,* It shall not be necessary to remove such buildings for the purpose of sale.

1. See §§ 6443, 6445, 6282, and 3264. The personal property of a *ward* residing outside of a city or town, in the possession and under the control of his guardian residing in the city, is liable to taxation by the city; but the guardian is not personally liable for the taxes due thereon, 23 Ind. 423. Refunding, 91 Ind. 528. Choses in action held by an administrator living within a city whose decedent lived and died without it can not be taxed by such city, 83 Ind. 211.

2. The *situs of shares* of stock in a company, for the purpose of taxation, is the domicile of the owner, 14 Ind. 27; 15 Ind. 150; 11 Ind. 139; even of foreign companies, 79 Ind. 351. The fact that foreign stock is taxable in another State does not exempt it from taxation here, 79 Ind. 351; 11 R. I. 321; 49 Pa. St. 519. Bonds of non-residents, § 6271, *note* 3, and § 6287, *note* 2.

3. The capital stock can not be assessed both at the place of the bank and the place where the owners thereof reside, 33 Ind. 107, 111.

4. A share of the part-owner of a steamboat running on the Ohio river, and occasionally touching at a city in the course of the voyages, is not liable to be taxed in such city merely from the fact that such part-owner is a resident citizen of that city, 3 Ind. 481; but see § 6293, *note*. Hogs slaughtered, packed ready for shipment, in this State, by a non-resident, may be listed and taxed in this State in the township where situated on April 1, 27 Ind. 288. A person

residing in a town of this State can not be taxed by the town with his personal property situate outside such town, 92 Ind. 222. See 72 Ind. 285, and § 6292, *note*.

Sec. 6291. Corporate property. 12. All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this State is situated shall be deemed its residence, but if there be no principal office in the State then such property shall be listed and taxed at any place in the State where the corporation transacts business. (22.)

1. The word "stock" did not formerly mean the subscriptions to stock, "but the actual tangible property" of the company, 5 Ind. 310. A tax, however, assessed on the capital-stock of a corporation is a tax on the property of which such capital is composed, 23 Ind. 331. The fact that a stockholder resides in another county does not render this section invalid, 33 Ind. 107. See 110 Ind. 11. The actual value of stock, in all cases, must be the criterion of value, 23 Ind. 331. See 26 N. E. Rep. 672.

Sec. 6291*a*. Co-partnership. 13. For the purposes of assessing property and collecting taxes, a co-partnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the tax duplicate, if such property is owned or occupied by a co-partnership, the firm name may be used. A co-partnership shall be deemed to reside in the township, town or city where its business is principally carried on. Each partner shall be liable for the whole tax.

A partner sold his interest in the partnership goods to his co-partner, and received his note in payment. Afterward, to prevent a seizure of those goods for taxes, which were a lien on the entire stock when the sale took place, the purchaser paid off the amount of these taxes. In an action against him on the purchase note he was allowed to set off against it the amount of taxes paid by him, 35 Ind. 527.

Sec. 6292. Property in transitu. 14. Personal property *in transitu* shall be listed and assessed in the township, town or city, where the owner resides: *Provided*, That if such property is intended for a particular business, it shall be listed and assessed at the place where the property of such business is required to be listed. (23.)

1. Staves purchased by a citizen of another State, remaining in this State to receive a finishing process before shipment to another State are taxable in this State; and a law taxing such property is valid, 96 Ind. 179; S. C. 49 Am. R. 159; 33 La. Ann. 843; 21 Ohio St. 605; 27 Ind. 288; 21 Ind. 335; 73 Ill. 125; 7 Fed. Rep. 745; 106 Ind. 302. But personal property of a non-resident of this State, at a railroad station, and awaiting shipment to the residence of the owner, has no permanent situs here, and is not taxable in this State, 89 Ind. 1; 106 Ind. 302; 7 Nev. 336; 30 N. J. L. 428; 23 N. Y. 224; 57 Ala. 61, S. C. 29 Am. Rep. 712; 33 Ia. 376, S. C. 9 Am. R. 132; 12 Rep. 196; 59 Ind. 472, 26 Am. R. 87.

2. Cattle brought into a county for pasturage is there taxable, 35 Ind. 282; 57 Tex. 395. Hogs purchased and packed in a city for shipment, owned by a non-resident, are there taxable, 27 Ind. 288; 21 Ind. 334; but the money invested in such pork can not be taxed under the head of "produce for export," 24 Ind. 425

(overruling 18 Ind. 33). Where a person residing in a town of this State has his personal property elsewhere, such town can not tax it, and the collection of the tax will be enjoined, 92 Ind. 222. See §§ 6312, 6313.

Sec. 6293. Water craft. 15. All persons, companies and corporations in this State owning or controlling steamboats, sailing vessels, wharf-boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, township, town or city in which the same may belong, or be enrolled, licensed or registered, or kept when not enrolled, licensed or registered. (24.)

Previous to 1889 water craft was listed at the residence of the owner. See 106 Ind. 170.

Sec. 6294. Banks—Brokers—Stock-jobbers, etc. 16. The personal property of banks or bankers, corporate or unincorporated, brokers, stock-jobbers, insurance companies, hotels, livery stables, saloons, eating houses, ferries and mining companies, and all companies except companies specially provided for in this act, shall be listed and assessed in the township, town or city where such personal property is situated. (25.)

Sec. 6295. Gas, water, and hydraulic companies. 17. The personal property of gas and coke companies, natural gas companies, electric light companies, water-works companies, and hydraulic companies shall be listed and assessed in the township, town or city where the principal works are located; the mains, pipes and wires of such companies laid in or along roads, streets or alleys shall be listed as personal property in the township, city or town where the same are laid or placed. (26.)

Sec. 6296. Road and bridge companies. 18. The personal property of street-railroad, plank-road, gravel-road, turnpike, or bridge companies shall be listed and assessed in the township, city, or town where the principal place of business is located. The track, road, or bridge of such company shall be held to be personal property, and shall be listed and assessed in the township, town, or city where the same is located or laid. (27.)

Sec. 6297. Principal and agent. 19. Persons required to list property on behalf of others shall list it separately from their own, specifying, in such case, the name of the person, estate, company, or corporation to whom it belongs. (28.)

1. If an agent fails to list property in the name of his principal it may be listed in his (the agent's) name, 27 Ind. 288. If a deed of trust shows on its face that it is such, the trustee is not personally liable for the taxes due on the trust property; but if it does not so show the trust, he is liable, 68 Ind. 500.

2. *Notes and choses* in action belonging to a *bona fide* non-resident of Indiana, placed in the hands of a resident attorney for safe-keeping and collection simply, and municipal bonds of such non-resident, placed temporarily in a bank for safe-keeping, are not liable to taxation, 59 Ind. 472.

3. All debts, of every kind and nature, due to persons having a domicile in this State are taxable to him where he has his domicile; but if due to a person not having a domicile here on April 1, unless *in* the *hands* of an *agent* doing business in this State, from which such *debts spring*, have no situs here, but have a situs where the creditor has his domicile, and are not taxable in this State, 68 Ind. 247.

Sec. 6298. Person removing—Doubts, how settled. 20. The personal property of persons removing from one county, township, town or city to another, between the first day of April and the first day of June, in any year, shall be listed and assessed in either place in which the owner is first called upon by the assessor. The owner of personal property moving into this State from another State, between the first day of April and the first day of June, in any year, shall be listed for his poll and the property owned by him on the first day of April of such year, in the county, township, town or city into which he has so removed: *Provided*, That if such person has been assessed, and shall make it appear to the assessor by the certificate of the proper authority in the place of his former residence, that he is held for tax for the current year in such former place of residence, he shall not again be assessed for such year. In case of doubt as to the proper place to assess personal property, if the doubt arises as to different townships in the county, the auditor shall determine the place; and if the doubt arises as to different counties, the auditor of state shall determine, such determination shall be summary and final. (29.)

1. The fact that the owner of personalty had been assessed on the first day of April for state and county purposes will not prevent his being assessed upon the very same property for city purposes, if he afterward, and before the first day of June, remove into a city of the same county, 55 Ind. 210.

2. All residents of a township on April 1, or at any time between that day and June 1, the time when the assessor is required to complete his assessments (§ 6385), are taxable in that township for their moneys and credits owned on April 1, except such as have become residents subsequent to the last-named date, and have been assessed, and are held for tax upon such moneys and credits in the taxing districts from which they have moved, 108 Ind. 353.

Sec. 6298*a*. Realty—Fiduciaries. 21. Real property shall be assessed in the place where situated, and to the owner, if known; if not, then to the occupant, if any; and if there be no occupant, then as unknown. Property in the control of an executor, administrator, guardian or trustee shall be assessed to such executor, administrator, guardian or trustee.

ARTICLE 6—DEFINITIONS AND RULES.

SEC.
6300. Proceeds of sale of exempt realty.
6301. Nursery stock.
6302. Deeds held as security.
6303. Franchises.
6304. Interest on exempt security.
6309. Chattels mortgaged or pledged.
6310. Real estate mortgaged.
6312. Merchants—Consignees.
6313. Manufacturers.
6314. Transient persons.
6315. Engines and machinery.
6316. Pawnbrokers.
6317. Books and papers—Official inspection.
6318. Leasehold estate.
6319. Public lands.
6320. Wabash and Erie canal.
6321. Undivided realty.
6322. Partition—Transfer.
6322*a*. Where clerk makes transcript for taxation and title.
6323. Owner or occupant.
6324. Rule, when township line divides.
6325. Description of realty.
6326. Lots and subdivisions.

SEC.
6327. Description of personalty.
6328. Affidavit of taxless persons.
6329. "Person" defined.
6329*a*. Dogs.
6329*b*. Dogs listed—Rate of taxation.
6329*c*. Assessor liable to a fine.
6329*d*. Oath of assessed persons.
6329*e*. Sheep-killing dogs.
6329*f*. Injury to killing or stealing listed dog.
6329*g*. Township trustee custodian of fund.
6329*h*. Owner's statement of sheep killed.
6329*i*. Payment of loss.
6329*j*. Repeal of act of 1881.
6329*k*. Registration.
6329*l*. Runabout dog.
6329*m*. Injuring or killing dog.
6329*n*. Misdemeanor to harbor unregistered dog.
6329*o*. Grand jury investigates.
6329*p*. Dog fund.
6329*q*. Claims for damages.
6329*r*. Assessing.
6329*s*. Repealing clause.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6300. Proceeds of sale of exempt realty. 22. When real estate is exempt from taxation in the hands of the holder of the fee, and the same is contracted to be sold, the amount paid thereon by the purchaser, with the value of the improvements thereon, until the fee is conveyed, shall be held to be personal property, and be listed and assessed as such, in the place where the land is situated. (31.)

SEC. 6301. Nursery stock. 23. The stock of nurseries, growing or otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise. (32.)

SEC. 6302. Deeds held as security. 24. When the deed for real estate is held for the payment of a sum of money, such sum, so secured, shall be held to be personal property, and shall be listed and assessed as credits. (33.)

SEC. 6303. Franchises. 25. Every franchise granted by any law of this State, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation shall be listed and assessed as personal property. (34.)

SEC. 6304. Interest on exempt security. 26. Where bonds or stocks are now, or may hereafter be, exempted from taxation, the accrued interest on such bonds or dividends on such stock shall be listed and assessed, unless otherwise exempted, without regard to the time when the same is to be paid. (35.)

SEC. 6309. Chattels mortgaged or pledged. 27. When personal property is mortgaged or pledged, it shall, for the purpose of tax-

ation, be deemed the property of the person who has the same in possession. (40.)

Sec. 6310. Real estate mortgaged. 28. In cases of mortgaged real estate, the mortgagor shall, for the purpose of taxation, be deemed the owner until the mortgagee shall have taken possession of the mortgaged premises—after which, the mortgagee shall be deemed the owner. (41.)

A crop of corn planted by the heirs after the death of the mortgagor, who died after foreclosure and sale, and which crop matured before the expiration of the year of redemption, is not liable for the payment of taxes charged against the mortgagor, 52 Ind. 233.

Sec. 6312. Merchants—Consignees. 29. Every person who shall own or have in possession, or subject to his control, any personal property within this State, with authority to sell the same, which shall have been purchased either in or out of this State, with a view of being sold at an advanced price or profit; or which shall have been consigned to him from any place out of this State, for the purpose of being sold at any place within this State,—shall be held to be a merchant; and at any time when he shall be, in pursuance of this act, required to make out and deliver to the assessor a statement of his other personal property, he shall, in like manner, make a statement of, and list as merchandise, all property held or owned by him appertaining to his business as a merchant, and, in addition thereto, attest, on oath or affirmation, the true cash value of all such property, appertaining to his business as a merchant, including, with amount on hand, in actual possession, all amounts purchased with a view to possession or profit. (43.)

See § 6292, *notes*.

Sec. 6313. Manufacturers. 30. Every person who shall purchase, receive, or hold personal property of any description for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall at all times when, by virtue of this act, he is required to, make and deliver to the assessor a statement of the amount or value of his other personal property subject to taxation, also, in like manner, state the value estimated (as provided in the preceding section) of all articles purchased, received, or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining, including the value of all manufactured articles on hand, in actual possession or elsewhere held for sale, and, in addition thereto, attest, on oath, the true cash value of all such property appertaining to his business as a manufacturer, including manufactured articles. (44.)

Sec. 6314. Transient persons. 31. Whenever, at any time during any year, any transient person shall locate in any township, city, town, or village, and shall offer to sell or otherwise dispose of any books or other goods, wares, or merchandise, under the name of a gift book-store or any other name or designation, it shall be the duty of the proper assessor for the time being of the place where such person shall locate, forthwith to call upon such person, and demand of him the true value, in money, of all his stock in trade; and in case such person shall neglect or refuse to return the same, under oath, within twenty-four hours after such demand, then it shall be the duty of said assessor to determine the same as in other cases; and, in either case, he shall forthwith, return such valuation to the auditor of the county, who shall cause the same to be entered at once on the tax duplicate, and collected immediately. (45.)

Sec. 6315. Engines and machinery. 32. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list, as a part of his personal property, the value of all engines and machinery of every description, used or designed to be used in any process of refining or manufacturing (except such fixtures as shall have been considered as a part of any tract or real property), including all the tools and implements of every kind used for the purpose aforesaid. (46.)

Sec. 6316. Pawnbrokers. 33. Every person or company engaged in the business of receiving property in pledge, or as security for money or other thing advanced to the pawner or pledger, shall be held to be a pawnbroker, and shall, at the time required by this act, return, under oath, the value of all property pledged and held by him as a pawnbroker, on hand on the first day of April annually; and taxes shall be charged upon the true cash value of such property to such pawnbroker, the same as other property. (47.)

Sec. 6317. Books and papers—Official inspection. 34. For the purpose of properly listing and assessing property for taxation, and equalizing, and collecting taxes, the township assessor, county assessor, county auditor, auditor of state, and boards of review and board of tax commissioners, shall each have the right to inspect and examine the records of all public offices, and the books and papers of all corporations and tax-payers in this State, without charges; and they shall also have power to administer all necessary oaths or affirmation in the discharge of their duties; and it shall be the duty of all assessors and all other officers charged with the duty of listing property for taxation, or charged with the duty of collecting taxes, to give, in writing, all information they may acquire in reference to the concealment of property from taxation by any person or corporation before mentioned to the county auditor, auditor of state, or boards of review or tax commissioners. (48.)

The county board of review has power to examine witnesses. Each member thereof may administer oaths, and perjury committed before the board may be made the basis of a criminal prosecution, 110 Ind. 82.

Sec. 6318. Leasehold estate. 35. When real estate which is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed, as the property of the lessee thereof, or his assignee, as real estate. (49.)

Sec. 6319. Public lands. 36. Government lands, canal lands, university and school lands, purchased prior to the first day of April, shall be taxable for that year, and annually thereafter. All school lands heretofore or hereafter sold shall be taxable from and after the sale and delivery of the certificate. (50.)

Formerly canal lands were exempt, 8 B. 352.

Sec. 6320. Wabash and Erie canal. 37. All mills, manufactories, warehouses, and other structures, with appurtenances and fixtures, erected or placed upon any lands leased by the board of trustees of the Wabash and Erie canal, shall be assessed to the lessees of such lands or their assigns, in possession of and occupying the same; but the lands or lots on which such mills, manufactories, warehouses, or other structures are situate shall be assessed to the owners thereof, and all locks, lands, dams, feeders, mill-sites, and water-power, and canal bed, with land appurtenant thereto, shall be assessed to the owners of said Wabash and Erie canal; and for the purpose of valuation, the entire property in any township shall be considered as an entirety, and shall be described in the assessment and in the tax duplicate as "The Wabash and Erie canal." All the above described property shall be taxable from and after the sale of said property under the decree of the United States Circuit Court, in the case of Thomas K. Gapen *vs.* Thomas Dowling et al. Nothing herein contained shall, in any way, prevent or interfere with the assessment of so much of said property as may lie in any city or town, by the city or town authorities, for taxation for municipal purposes. (51.)

This section is constitutional, 8 B. 352.

Sec. 6321. Undivided realty. 38. The undivided real estate of any deceased person not in control of an executor or administrator, may be listed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they shall have given notice to the auditor of the county or counties in which such real estate is situated of the division of the same, and the names of the several heirs or devisees, and the proportions allotted to each; and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or

devisees their respective proportions thereof, when paid by him, and interest thereon; and the lien for the proportion of taxes paid on the different shares of the land shall vest in the person who pays the taxes. (52.)

Unless the owners take the proper steps to show the separate interest of each, the land is liable for the tax of each owner, and the tax lien may be foreclosed and a sale of the entire tract ordered, 84 Ind. 342. One to whom land has descended jointly with other heirs, may pay the taxes upon the entire tract and enforce contribution from the other tenants in common, 114 Ind. 273; 8 Mich. 263. Redemption, see § 6474.

Sec. 6322. Partition—Transfer. 39. Whenever a division or partition has been made, or other changes take place in the ownership of any tract or lot of land or any part thereof, by conveyance, sale, devise, or descent, the county auditor, on being satisfied thereof, shall transfer the same on the last appraisement list, and apportion the same and the valuation thereof, with all delinquent taxes, to the several owners. (53.)

1. See § 6423.

2. It is not the duty of the county auditor to examine the court records to see if partition of land has been made; and an assessment against all the owners jointly is not invalid, even though there has been a partition. This is also true of city and town taxes, 16 Ind. 506. There can be no valid transfer of real property for taxation purposes except upon change of title, and the production of evidence thereof to the proper county auditor. Consequently a transfer of land conveyed by a parol gift is void, 71 Ind. 281. In a dispute whether there has been a parol partition the tax duplicate showing that the lands were taxed to the respective persons to whom they were supposed to have been allotted is admissible in evidence, as tending to show the partition, 96 Ind. 298. See § 6322*a*.

[1859, p. 160. Approved March 5, 1858, and in force August 6, 1859.]

Sec 6322*a*. When clerk makes transcript for taxation and title. 1. In all actions for partition of real estate in any court of this State, and in all other cases where the transfers to the parties entitled thereto are made by judgment only, and not by deed, the clerk shall make out a transcript of such judgment, showing the transfer aforesaid, under his hand and the seal of the court ordering the same, and deliver the same to the auditor of the county wherein such real estate is situate, who shall forthwith make the proper entries upon his transfer-book, and note such transfer, as in other cases, upon the back of such transcript, and shall, thereupon, deliver the same to the recorder of such county, who shall record the same in the record of deeds in his office. And the said clerk, auditor, and recorder shall each receive, for such services, from the person entitled to said real estate, such fees as they are now, by law, entitled to receive for similar services, which shall be taxed by the court rendering such judgment as part of the costs of such proceedings as may result in the same: *Provided, however*, That there shall be no more than one transcript of any such judgment made out and recorded as aforesaid in any case whatever. [R. S. 1881, § 5853.]

See § 6423.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6323. Owner or occupant. 40. Lands occupied by any person not the owner thereof shall be listed in the name of the owner, if known; otherwise, as the lands of unknown owners. And for taxes, if paid by any occupant, he shall have his action against the owner and a lien upon such lands, until the same, with interest, is repaid to him. (54.)

The general rule is that the law looks to the legal owner as the party by whom the lands in the State are to be listed, and to whom they are to be charged for taxation, 28 Ind. 256; 49 Ind. p. 274. See 68 Ind. 500.

Sec. 6324. Rule, when township line divides. 41. When the lines between two townships divide a tract of land surveyed differently from the congressional surveys, if listed to the owner thereof (he being a resident of either township in which a part of such tract of land may lie), or if listed to the occupant under the preceding section of this act, the same shall be listed in the township in which such owner or occupant resides; and in all other cases, the same shall be listed in the township in which the greater part thereof lies. (55.)

Sec. 6325. Description of realty. 42. Whenever the real estate to be listed and assessed can not be described by a congressional subdivision, or by the number of lot or plat, the same shall be sufficiently described for the purpose of listing, assessing, collecting the tax thereon, and conveying the title thereto (when the same is sold for non-payment of taxes), by reference to any sufficient and intelligible description of such land or lot in the deed, mortgage, will, or other public record of the county, substantially in the following manner (the number of acres, book and page, and place being changed to suit each particular case): "Fifty acres in survey No. 158 of Clark's Grant, as described in deed-book 64, page 219, of the recorder's office of Clark county." And when no sufficient and intelligible description of such real estate can be obtained, for such reference, by the assessor or other officer listing such land, from the owner or public records of the county, such officer shall cause the county surveyor to survey and plat such land, and furnish him with such description; and a reference to such description in such survey, substantially in the following manner, shall be sufficient description of such land for the purposes above mentioned: "Fifty acres in survey No. 100 of Clark's Grant, as designated on the plat thereof made by the county surveyor, on the ——— day of ———, 18—." The costs of such survey shall be entered, by the auditor, on the tax duplicate, and collected as a part of the tax on said land. It shall be sufficient to describe the real property assessed in the manner heretofore in use by initials, letters, abbreviations and figures. (56.)

1. Land was described as follows: "Richardson's heirs, 56 acres in the S. E. quarter of section 8, township 12, range 13," of a certain county. In an action by

the State under an early tax law, to foreclose the tax lien, it was held that the description of the land was too imperfect to authorize the judgment applied for, 5 B. 51. But where a tax deed described the land as "seventy-six acres of land, being a part of the southeast quarter" of a certain section, the description of the land was deemed good, because of the section (§ 6460) requiring the land sold for taxes to be laid off in a square form in the northwest corner of the tract upon which delinquent taxes are due, 7 Ind. 232. Description by abbreviations is sufficient, thus: "S. E. ¼ of N. W. ¼ Sec. 18, T. 21, N. R. 7 E. 40 acres," 33 Ind. 50.

2. Even if the land is so insufficiently described as not to convey the title on a sale of it for taxes, yet the purchaser holding a tax deed based upon such sale may foreclose the lien given him under § 6497, by averring that the description used "was intended to apply to and cover the lands" particularly described in the complaint, and upon which it is sought to foreclose the lien, 71 Ind. 244; 123 Ind. 394; 81 Ind. 180, 294; 60 Ind. 573; 88 Ind. 159 (distinguishing 77 Ind. 280); 99 Ind. 566; 118 Ind. 323. If the description in a tax deed is such as enables a competent person to identify and locate the particular land intended to be conveyed, it is sufficient to enable the purchaser to enforce a lien against the land for the principal, interest and penalty of the sum paid by him, 81 Ind. 180 (and in fact to give him a good title by virtue of his tax deed).

3. Even a misdescription of the land sold does not destroy the tax lien, 99 Ind. 352; nor an insufficient description, 108 Ind. 174.

4. And where, in a suit to quiet title, the land in controversy was described on the tax duplicate as "120 ft. Washt. St. S. W. cor. out. 66," the county auditor and treasurer were permitted to testify that "ft." meant "feet," "Washt. St." meant "Washington Street," "S. W. cor." meant "Southwest corner," and "out. 66" meant "outlot 66." And in this there was held to be no error, 104 Ind. 578. So "The west part of the N. E. N. E. sec. 35, town 23 N. R. 6 E.; 30 acres," is good, 94 Ind. 201.

Sec. 6326. Lots and subdivisions. 43. Whenever any tract of land has been platted into lots or subdivisions, the description of any such lot or subdivision, by reference to its number on said plat and the number or designation of the plat, shall be a good, valid, and sufficient description thereof, for the purpose of listing, assessing, collecting the tax thereon, and conveying the title thereto, when sold for the non-payment of taxes. (57.)

Sec. 6327. Description of personalty. 44. In entering personal property upon the proper tax books for the purpose of taxation, it shall be a sufficient description of the same to use the words "personal property"; and such phrase shall comprehend and embrace all species of personal property belonging to the party charged therewith on the tax books, and no more specific description or designation thereof shall be necessary. (58.)

Sec. 6328. Affidavit of taxless persons. 45. Any person who, being called upon to list property, either on his own account or for others, subject to taxation, claims to have none, shall be required by the assessor or other proper officer to make oath, in writing, to the truth of his claim in that behalf, and proper blank forms for such affidavit shall be provided; and such person shall be subject to the pains and penalties of perjury for a false oath. (59.)

Sec. 6329. "Person" defined. 46. The word "person," as used in this act, shall be held to include and mean "firm," "company," "association," or "corporation." (60.)

Sec. 6329*a*. Dogs. 47. The assessor shall list every dog over the age of six months within his township to the person owning, keeping or harboring the same, and such person shall be charged on the duplicate one dollar if a male, and two dollars if a female dog, and the further sum of two dollars for each additional dog, beyond one; which amounts so charged shall be carried to the column of total amounts, and collected as other taxes are collected: *Provided*, That nothing in this act shall be so construed as to repeal or modify any of the provisions of an act to provide for the taxation of dogs, etc., in force March 7, 1883, and an act to amend section 8 of said act of March 7, 1883, approved April 8, 1885, both of which acts shall remain in full force and effect.

1. The proviso to this act is construed by the present attorney-general (1891) of this State as repealing all that part of the section preceding it. If such is the case the act of 1883, as amended in 1885, is still in force, and so that official holds. He also holds that the dog registration act of 1891 is in force, equally with the act of 1883; and that the owner of a dog may register under the act of 1891 at any time before he is assessed for taxation, at which time, if he has not so registered, he must be assessed under the act of 1883. Such being the case, we give at length both the acts of 1883 and 1891.

2. Dogs registered can not be assessed, § 6329*r*.

[1883, p. 148. Took effect, without approval, March 7, 1883.]

Sec. 6329*b*. Dogs listed—Rate of taxation. 1. The assessors of each township within the State, shall, between the first day of April and the first day of June, in each year, list every dog over the age of six months within his township to the persons owning, keeping or harboring the same, and such person shall be charged on the tax duplicate one dollar, if a dog or spayed female dog, and two dollars if a female dog unspayed, and two dollars for each additional dog more than one of any kind or sex whatever, so owned, kept or harbored by such person, which amount so charged shall be carried to the column of total amounts and collected as other taxes are collected. [El. Sup. § 444.]

This statute is valid, 27 Ind. 62, 120. See § 6329*k*.

Sec. 6329*c*. Assessor liable to a fine. 2. Every assessor who shall fail to use due diligence in listing any dog owned, kept or harbored within his township, between the first day of April and the first day of June, in each year, shall be fined in any sum not exceeding five dollars for each dog not listed for want of such diligence. [El. Sup. § 445.]

Sec. 6329*d*. Oath of assessed person. 3. Every person liable to taxation in any township within the State, and residing therein when listed for taxation, shall make and subscribe an oath, in which

shall be stated the number of dogs, male and female, spayed and unspayed, over the age of six months, owned, kept, or harbored by such person; and any person who shall make a false statement as to the number of such dogs so owned, kept or harbored by him, shall, upon conviction, be fined in any sum not exceeding one hundred dollars. [El. Sup. § 446.]

Sec. 6329e. Sheep-killing dogs. 4. An[y] dog that is known to kill or maim sheep may be killed by any person, and any person who shall own, keep or harbor any dog, after he knows that such dog has killed or maimed sheep, shall be fined in any sum not exceeding fifty dollars. [El. Sup. § 447.]

Sec. 6329f. Injury to, killing or stealing listed dog. 5. Any person who shall mischievously or maliciously injure or kill any dog that has been duly listed for taxation, or any person who shall steal, take and carry away any dog that has been duly listed for taxation according to law, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding two hundred dollars, to which may be added imprisonment in the county jail for any term not exceeding thirty days: *Provided*, That in all cases such dogs are injured or killed while engaged in committing damages to the property of any other person than the owner of such dogs, or is known to be a dog that will kill or maim sheep, the above provisions shall not apply. [El. Sup. § 448.]

1. See § 6329*m*.

2. An act of 1852 (R. S. 1881, § 2646) allowed the killing of all dogs found off the premises of their owner, but this act was repealed by the dog-tagging law of 1881, and was not revived by this act, 103 Ind. 101. Under this section a dog listed for taxation can not be killed except while engaged in committing damage to the property of others than its owner, or is known to be a dog that will kill or maim sheep. In a prosecution under this statute the value of the dog is immaterial, 103 Ind. 101. It is not a larceny to steal an unlisted dog; and the thief can not be criminally punished, 79 Ind. 9, although he is civilly liable.

Sec. 6329g. Township trustee custodian of fund. 6. All money derived from the taxation of dogs and fines under the provisions of this act shall constitute a fund known as a dog fund, and be used for the payment of damages sustained by the owners of sheep maimed or killed by dogs within any township, and each township trustee in this State is required to collect annually the taxes and fines of the county treasurer. The several county auditors shall set apart the amount of such tax collected in each and every township, and the county treasurer shall pay the same, with fines collected, to the township trustee in whose township the dogs were listed or the penalties originated, and said trustee shall hold the same for the purpose aforesaid. [El. Sup. § 449.]

See § 6329*p*. So far as the above section attempts to make the fines assessed under this act a part of the sheep fund, it is unconstitutional. Such fines, under the constitution, belong to the school fund, § 183.

SEC. 6329*h*. **Owner's statement of sheep killed.** 7. The owners of sheep killed or maimed by dogs shall, within ten days from the time thereof, report to the trustee of the township, under oath, in which he shall state the number, age, as he believes, and the value of the sheep so killed, and the damages sustained on account of the maimed; and any person who shall make any false statement of any such matters shall, upon conviction, be fined in any sum not exceeding one hundred dollars, to which may be added imprisonment in the county jail for any term not exceeding thirty days. [El. Sup. § 450.]

[1885, p. 161. Approved April 8, 1885, and in force July 18, 1885.]

SEC. 6329*i*. **Payment of losses.** 8. The trustee shall register such losses in the order they are reported, which order shall be observed in the payment of losses: *Provided*, That no person shall receive pay for sheep killed or maimed by a dog owned, kept or harbored by himself: *Provided, further*, That the dog fund heretofore collected shall be added to and applied with the fund arising under the provision of this act; and when it shall so occur on the first Monday in March of any year in any township that said fund shall accumulate to an amount exceeding fifty dollars, over and above orders drawn against the same, the surplus aforesaid shall be paid and transferred to the county treasurer of the county in which such township is located, and the fund arising from such surplus from the township of the county shall constitute a county dog fund, and shall be distributed among the townships of the county in which the orders drawn against the dog fund exceed the money on hand. This distribution shall be made on the second Monday in March, and if the said county dog fund be insufficient to pay for all the killed sheep of all the townships, the distribution shall be made in the ratio of the orders drawn against the dog fund of the townships, and unpaid and unprovided for, which ratio shall be gotten from the report of the trustees of the townships made to the auditor of the county, which it is hereby directed shall be made by each township trustee of the county upon the first Monday in March of each year, which report shall show all receipts into the dog fund of his township, and all orders drawn against the same; and when it shall occur upon the second Monday of March that there is a surplus left of the dog fund after provisions have been made for the payment for all the killed sheep of all of the townships of the county, such surplus shall be distributed for the schools of the county in the same manner that interest upon the congressional school fund is distributed. [El. Sup. § 454.]

1. See § 6329*q*. The fund, over $50, is distributed now according to section 6509*a*, and section 4487*d*. The fund, so far as it goes to the support of schools, must be apportioned amongst the schools of the township; and its application to a single school, or its use in advance of the apportionment of other funds for tuition, may be stopped by an injunction, 47 Ind. 241.

2. Mandate will not lie to compel the trustee to pay for sheep killed; the remedy is by suit against the township, 57 Ind. 390.

3. The fund is first applicable to the payment for sheep killed without reference to the year in which it was collected, 57 Ind. 390.

[1883, p. 148. Took effect without approval March 7, 1883.]

Sec. 6329*j*. Repeal of act of 1881. 9. An act entitled "An act to protect sheep husbandry, to regulate matters connected therewith, to provide for registration, taxing and killing dogs," approved April 13, 1881, be and the same is hereby repealed.

1. The law repealed is §§ 2647 to 2651, inclusive, of Revised Statutes of 1881.

2. See § 6329*s*.

[1891, p. 453. Approved and in force March 5, 1891.]

Sec. 6329*k*. Registration. Any person who shall own, harbor or permit any animal of the dog kind to harbor or stay about his, her or their premises, shall on or before the first Monday in May, 1891, and each year thereafter on or before the first Monday in May report the number of dogs owned or harbored, or permitted to be harbored by such person which exceed the age of three months, to the township trustee of their respective townships, who shall register the same to the proper owner, with a brief description of each dog, giving sex, color and breed, for which the owner or person permitting such dog to be harbored shall pay for a male dog the sum of one dollar and for a female dog the sum of two dollars, and for each additional male dog two dollars and for each additional female dog five dollars, which sum shall be paid to the trustee on or before the first Monday in May, as provided in this act, and upon such payment the trustee shall give a receipt, which receipt shall be *prima facie* evidence of compliance with the requirements of this act.

See § 6329*a*, *note;* also § 6329.

Sec. 6329*l*. "Runabout dog." 2. It shall be unlawful for any dog to roam about over the country unattended by its owner or the agent of said owner, and that when such dog shall be found roaming over the country unattended, as provided in this act, the same shall be deemed a "runabout dog," and it shall be lawful to kill such dog.

Sec. 6329*m*. Injuring or killing dog. 3. Any person who shall maliciously injure, or kill, or any person who shall steal, take, or carry away a dog which has been duly registered, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars.

See § 6329*f*.

Sec. 6329*n*. Misdemeanor to harbor unregistered dog. 4. It shall be a misdemeanor for any person to keep, harbor, or to permit

any dog to stay about his, her or their premises which has not been registered, as provided by this act, and any person or persons violating the provisions of this act shall be fined in any sum not exceeding five dollars.

Sec. 6329o. Grand jury investigates. 5. Any person may inform the grand jury of the violation of this act, and it shall be the duty of the grand jury to investigate the alleged violation of the law, and to send for the registry of the township trustee, which registry shall be *prima facie* evidence as to the registration of such dog or dogs: *Provided, further*, That any citizen may file an affidavit before any justice of the peace in the county, who shall summon the trustee to appear with the record of registered dogs, kept as provided in this act, which record shall be offered as evidence. Any person prosecuted or fined under this act shall be liable to additional prosecution so long as the provisions of this act are not complied with.

Sec. 6329p. Dog fund. 6. All moneys derived from the registration of dogs, and all fines under this act, shall constitute a fund known as the dog fund, which fund shall be for the payment of damages sustained by the owners of swine, cattle, horses and sheep killed, maimed, or damaged by dogs within such township. Each township trustee shall collect all fines belonging to his township from the different courts where such fines have been assessed.

See § 6329g, *note*.

Sec. 6329q. Claims for damages. 7. The owners of sheep, swine, cattle or horses killed, maimed or damaged by dogs shall, within ten days from the time thereof, report to the trustee of his township, under oath, in which he shall state the number and age (as he believes), and the value of the sheep, swine, cattle or horses so killed, and the damages sustained on account of such maimed and injured animals; in which affidavit he must be joined by two disinterested and reputable freeholders, and any person who shall make any false statement of any such matters shall, upon conviction, be fined in any sum not exceeding one hundred dollars, to which may be added imprisonment in the county jail for any term not exceeding thirty days: *Provided, however*, That, if the township trustee deems the appraisement of the animals so killed, maimed or injured excessive, he shall tender to the owner or owners thereof an amount which in his judgment is equal to the injury sustained, and if in any action at law by the owner or owners thereof for the recovery of such damages, he or they shall fail to recover a judgment, exclusive of cost, for an amount greater than the amount so tendered, the defendant shall recover cost in such suit.

See §§ 6329h and 6329i.

Sec. 6329*r*. Assessing. 8. All dogs registered as provided for in this act shall not be assessed for taxation for any purpose whatever.

Sec. 6329*s*. Repealing clause. 9. All laws and parts of laws in conflict with the provisions of this act are hereby repealed *pro tanto*.

See § 6329*j*.

ARTICLE 7—MANNER OF LISTING PERSONALTY.

SEC.		SEC.	
6330.	Blanks—Statements—Valuation.	6335.	Evasion—Assessor's duty.
6330*a*.	Meeting of assessors.	6336.	Blanks—Form of "schedule."
6330*b*.	Quorum.	6337.	Mutes—Blind—Insane—Lists.
6330*c*.	Chairman and secretary.	6337*a*.	Giving false list.
6330*d*.	Fixes valuation.	6339.	False statement—Penalty.
6330*e*.	Pay.	6340.	Assessor's valuation.
6331.	Interrogatories.	6341.	Penalties.
6331*a*.	List of property.	6342.	Sickness or absence—Proceedings.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6330. Blanks—Statements—Valuation. 48. On the first day of April of each year, or as soon thereafter as practicable, and before the first day of June, the assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose; and, thereupon, such person shall make to such assessor a full and correct description of all the personal property of which such person was the owner on the first day of April of the current year; and such person shall, also, at the same time, make separate, full, and true statements, in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed, or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity; and he shall fix what he deems the true cash value thereof to each item of property, for the guidance of such assessor; who shall determine and settle the value of each item, after examination of such statement and, also, an examination, under oath, of the party or of any other person, if he deem it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the market or usual selling price at the place where the property shall be at the time of its liability to assessment; and if there be no market value, then the actual value. In making the valuation, annuities and royalties shall be valued at their present cash value. For the purpose of making such statements, the person to be assessed shall receive the proper blanks from the assessor. (62.)

1. A resident of this State can be taxed for choses in action, bank stocks, or other corporation stocks owned in another State, although such stocks and securities have never been in Indiana, 14 Ind. 354; 108 Ind. 353. As to what residence is, see 52 Ind. 361, and § 6271, *note*.

2. Assessment lists are competent *evidence* as tending to show the amount of property owned by the assessed. They are "instruments kept in a public office in this State," R. S. 1881, § 462, when returned by the assessor to the county auditor; and certified copies of them are admissible in evidence. The certificate, however, must show that they "are true and complete copies" of those in the custody of the auditor; and merely saying that "the above is a true copy of the assessment list" of a person named for a certain year, is not sufficient, 75 Ind. 208.

3. To constitute a *valid assessment* it must be made by the proper officer. There must, at least, be some attempt toward an assessment, and a compliance with the law by some officer authorized to make the assessment. If the assessment is illegal the taxes can not be collected; even the county treasurer can not maintain (under § 6435) an action to recover the taxes illegally assessed, 118 Ind. 214 (distinguishing 91 Ind. 528; 95 Ind. 182); 117 Ind. 410.

4. When assessment made, § 6280.

[1889, p. 218. Approved March 8, 1889, and in force May 10, 1889.]

SEC. 6330*a*. Meeting of assessors. 1. It shall be the duty of the county auditors of the several counties of this State to notify the township assessors of their respective counties to meet at the auditor's office on the first day of April of each year, or if the first day of April be Sunday, then on the day succeeding, for the purpose of agreeing upon a uniform rate of assessment for the county. [El. Sup. § 2130.]

SEC. 6330*b*. Quorum. 2. A majority of the township assessors at such meeting shall constitute a quorum for the transaction of business. [El. Sup. § 2131.]

SEC. 6330*c*. Chairman and secretary. 3. The county auditor shall be chairman of said meeting, and they shall choose one of their number to act as secretary. [El. Sup. § 2132.]

SEC. 6330*d*. Fixes valuation. 4. Such meeting shall make out, as far as practicable, a list of personal property, and attach thereto a uniform rate of assessment, according to their relative values in the several townships and localities; and a majority of said assessors having signed said list the secretary shall make out and cause to be presented to each of said assessors a copy thereof, and said assessors shall be governed as far as practicable by said list of prices. [El. Sup. § 2133.]

SEC. 6330*e*. Pay. 5. The county auditor and assessors shall be allowed for said service the sum of three dollars each, to be paid out of the county treasury. [El. Sup. § 2134.]

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6331. Interrogatories. 49. The person called upon or required by the assessor to list property shall answer, in writing, under his signature, the following interrogatories, under oath, upon the proper blank form thereof, to be furnished him by the assessor, who shall also administer the oath:

Interrogatory One. *Are you or were you, on the first day of April of the present year, the executor of the last will or the administrator of the estate of any deceased person; or the guardian of the estate of any infant or person of unsound mind; or the trustee of the property of any person; or the receiver of any corporation, association, or firm; or the agent or attorney or banker investing, loaning, or otherwise controlling the money or other personal property of any other person, resident in this State; or the president or accounting officer of any corporation; or a partner, consignee, or pawnbroker? If yes, designate for whom you were then or are now acting in such representative or fiduciary capacity; and if you were, or are now, acting under the authority of any particular court, name the court, and also state to what court you report.*

Interrogatory Two. *Have you, before the first day of April of the present year, either personally or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into United States notes not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return, or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return, re-exchange, or sell back such property for the purpose aforesaid?*

Interrogatory Three. *If you have converted any of your money or property or money or property of any other person as inquired of you, then state when the same was so converted or invested, and the kind and the amount or value thereof.*

A space shall be left on the blank, under each interrogatory, for the answer to the same. (63.)

Conversion of property into United States bonds, previous to the enactment of this section was held valid, 55 Ind. 433. "Greenbacks" can not be taxed by the State, 21 Ind. 261; nor can U. S. bonds, 23 Ind. 331; but national bank currency or notes can be, 32 Ind. 27.

SEC. 6331*a*. List of property. 50. Every person required by this act to make or deliver such statement or schedule shall set forth an account of the property held or owned by him, as follows:

PERSONAL PROPERTY—CREDITS.

First. All annuities and royalties.

Second. All bonds, notes, mortgages, accounts, demands, claims, and other indebtedness owing to such person, whether such indebtedness is owing from individuals or corporations, public or private, and whether such debtors reside within or without the State, including all deposits in banks or with other corporations or with individuals.

Third. All *bona fide* indebtedness owing by such person.

PERSONAL PROPERTY—CHATTELS.

First. All shares in banks organized in this State under any law of this State, or of the United States, and their full market value, after deducting the value of the real estate as taxed to the banks.

Second. All shares in foreign corporations, other than banks, and their value.

Third. All shares in other corporations organized under the laws of this State, when the property of such corporation is not exempt by some law, or is not taxable to the corporation itself, and the cash value of such shares.

Fourth. All moneys.

Fifth. The value of all gold and silver plate, watches, diamonds and jewelry.

Sixth. The value of all household furniture and musical instruments.

Seventh. All patent rights, describing them, and giving the number of each patent, and the value of each.

Eighth. The number and kinds of domestic animals and their value.

Ninth. All wagons, carriages and sleighs and their value.

Tenth. All mechanical and agricultural implements and tools, and their value.

Eleventh. All machinery not affixed to real property and its value.

Twelfth. All ships, boats and vessels, whether at home or abroad, and their value.

Thirteenth. All merchandise and stock in trade and its value.

Fourteenth. All logs, timber, lumber, posts, ties, cord-wood, staves, or other felled or cut timber, and the value.

Fifteenth. All other goods, chattels and personal property, not heretofore specifically mentioned, and their value, except property specifically exempt from taxation.

Sec. 6331*b*. Failure to make statement. 51. In every case where any person shall neglect or refuse to make out and deliver a sworn statement of his property to the assessor as required by this act, or if the assessor shall be in doubt whether such statement is correct, such assessor is hereby authorized and required to examine on oath any other person whom he believes to have knowledge of the amount or value of any property owned or held by such person so neglecting or refusing; and such assessor is authorized to set down and assess to such person such amount of personal property as he may deem just.

Sec. 6335. Evasion—Assessor's duty. 52. Whenever, from the answer to the second interrogatory on the schedule, and from the evidence before him, the assessor is satisfied that the person required to list his property has, since the first day of April of the preceding year, temporarily converted any part of his property into property not taxable, for the purpose of preventing such property from being listed and of evading the payment of taxes thereon, such assessor shall cause such property to be assessed at its true cash value. (67.)

Where personal property is converted into United States securities, for the express purpose of avoiding taxation, a court of equity will not interfere to enjoin the collection of a tax assessed on such securities, 59 Ind. 460.

Sec. 6336. Blanks—Form of "schedule." 53. Before the first day of April of each year the county auditor shall have in readiness for delivery to the assessor the proper assessment books and necessary blanks for the assessment of all property, real and personal. The schedule, with affidavits thereto attached, to be signed by the party, shall be in the following form, the names and places being changed to suit each person: The words "value," "cash value," "true value" or "valuation," whenever used in this act, shall be held to mean the usual selling price at the place where the property to which such term or terms are applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. The party shall write the word "none" after each item whenever he has no property to assess as named in such item, and no item shall be passed without being answered.

SCHEDULE

Of all property held by . . . . . , of . . . . . Township, ... County, Ind., on the 1st day of April, 189 .

PERSONAL PROPERTY—CREDITS.

Number.	Description of Property.	Valuation by Party.	Valuation by Assessor.
1	*All annuities* . . . . . $.....	.....	.....
2	*All bonds* . . . . . $.....	.....	.....
3	*All notes secured by mortgage* . . . . . $.....	.....	.....
4	*All other notes* . . . . . $.....	.....	.....
5	*All accounts* . . . . . $.....	.....	.....
6	*All demands and claims* . . . . . $.....	.....	.....
7	*All deposits in banks* . . . . . $.....	.....	.....
8	*All deposits with other corporations* . . . . . $.....	.....	.....
9	*All deposits with individuals* . . . . . $.....	.....	.....
10	*All other amounts due me from any person or corporation* . . . . . $.....	.....	.....
	Total credits due me . . . . . $.....	.....	.....
	From the sum of the above credits I claim a deduction of the amount of my bona fide indebtedness, to wit:		
	Total indebtedness which should be deducted from my credits. . . . . . $.....	.....	.....
	Leaving balance for which I should be assessed . $.....	.....	.....

PERSONAL PROPERTY—CHATTELS.

Number.	Description of Property.	Valuation by Party.	Valuation by Assessor.
1	*Money on hand or subject to my order not already entered under title of "credits"*	.....	.....
2	*All money loaned by me and not already entered on this schedule*	.....	.....
3	*All interest owing me not entered on this schedule*	.....	.....
4	*All judgments or allowances in my favor, entered in any court, and which I have not already entered on this schedule; also, all legacies, bequests and other estates in expectancy*	.....	.....
5	*All shares of stock in any corporation formed outside of this State; and also all shares of stock in any corporation formed in this State, and conducting its business outside of this State*	.....	.....
6	*Value of goods and merchandise on hand*	.....	.....
7	*Value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining*	.....	.....
8	*Value of manufactured articles on hand*	.....	.....
9	*Value of manufacturing tools, implements and machinery (other than engines and boilers, which shall be listed as such)*	.....	.....
10	*Value of agricultural tools, implements and machinery*	.....	.....
11	*Value of gold or silver plate and plated ware*	.....	.....
12	*Value of diamonds and jewelry*	.....	.....
13	*Value of household furniture and library*	.....	.....
14	*Value of mechanical tools, law and medical books, surgical instruments and medicines*	.....	.....
15	*Value of nursery stock*	.....	.....
16	*Value of property such person is required to list as pawnbroker*	.....	.....
17	*Value of property of companies and corporations other than property hereinbefore enumerated*	.....	.....
18	*Value of property of saloons and eating houses*	.....	.....
19	*Value of market garden products*	.....	.....
20	*Value of home-made manufactures*	.....	.....
21	*Value of slaughtered animals*	.....	.....
22	*Every franchise and description and value*	.....	.....
23	*Value of brick, stone and all other building material on hand*	.....	.....
24	*Number of steamboats, sailing vessels, wharf boats, canal boats, barges, or other water craft, either within or without this State, and value*	.....	.....
25	*Number of patent rights and value*	.....	.....
26	*Number of steam engines, including boilers, and value*	.....	.....
27	*Number of fire and burglar proof safes and value*	.....	.....
28	*Number of billiard, pigeon-hole, bagatelle and other similar tables and value*	.....	.....
29	*Number of pianofortes and other musical instruments and value*	.....	.....
30	*Number of sewing or knitting machines and value*	.....	.....
31	*Number of watches and clocks and value*	.....	.....

PERSONAL PROPERTY—CHATTELS.—CONTINUED.

Number.	Description of Property.	Valuation by Party.	Valuation by Assessor.
32	*Number of carriages, wagons, coaches, hacks, carts, drays or other vehicles and value*		
33	*Number of hoop-poles and value*		
34	*Number of horses and value*		
35	*Number of mules, jacks and jennets and value*		
36	*Number of cattle and value*		
37	*Number of sheep and value*		
38	*Number of hogs and value*		
39	*Number of cords of wood and value*		
40	*Bushels of coal and value*		
41	*Bushels of lime and value*		
42	*Bushels of wheat and value*		
43	*Bushels of corn and value*		
44	*Bushels of rye and value*		
45	*Bushels of oats and value*		
46	*Bushels of potatoes and value*		
47	*Bushels of barley and value*		
48	*Bushels of grass and clover seed and value*		
49	*Bushels of flaxseed and value*		
50	*Bushels of fruit and value*		
51	*Tons of hay and value*		
52	*Tons of hemp and value*		
53	*Pounds of beef and value*		
54	*Pounds of bacon and value*		
55	*Pounds of bulk pork and value*		
56	*Pounds of lard and value*		
57	*Pounds of wool and value*		
58	*Pounds of tobacco and value*		
59	*Pounds of hops and value*		
60	*Pounds of maple sugar and value*		
61	*Barrels of beef and value*		
62	*Barrels of pork and value*		
63	*Gallons of cider and value*		
64	*Gallons of vinegar and value*		
65	*Gallons of wine and value*		
66	*Gallons of sorghum or maple molasses and value*		
67	*Feet of lumber and value*		
68	*Pounds of starch and value*		
69	*Pounds of feed and value*		
70	*Reams of paper and value*		
71	*Pounds of pulp and value*		
72	*Gallons of oils of all kinds and value*		
73	*Number of scales and value*		
74	*Number of yards of cloth and value*		
75	*Number of yards of flannel and value*		
76	*Number of blankets and value*		
77	*Pounds of yarn and value*		
78	*Tons of ice and value*		
79	*Number of threshing machines and value*		
80	*Number of corn shellers and value*		
81	*Value of logs, timber and all other property, not specified above, required to be listed*		
82	*Male dogs owned or harbored by me*		
83	*Female dogs owned or harbored by me*		

To the Assessor:

The following is a list of all persons in my family, and belonging to my township, who are deaf and dumb, blind, idiotic, or insane, with their names, ages and sex, and also the name of the father, mother or guardian, and their postoffice address:

NAME.	Age.	Sex.	Whether Deaf and Dumb, Blind, Idiotic or Insane.	Name of Father, Mother or Guardian.	Postoffice Address.
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

State of Indiana, ——— County, ss:

I, ——— ———, being duly sworn, say, to the best of my knowledge, information and belief, the foregoing statement contains a true, full and complete list of all property held or belonging to me, and dogs owned, kept or harbored by me, on the first day of April, including all personal property, appertaining to merchandising, whether held in actual possession or only having been purchased with a view to possession or profit, and all manufactured articles, whether on hand or owned by me. In all cases where I have been unable to exhibit certain classes of property to the assessor, such property has been fully and fairly described, and its true condition and value represented. That I have in no case sought to mislead the assessor, as to either quantity or quality or value of property, and that the deductions claimed from credits are bona fide *debts for a consideration received and do not consist in any part in bonds, notes or obligations of any kind given to any insurance company on account of premium or policies, nor on account of any unpaid subscription to any literary, scientific or charitable institution or society, nor on account of any subscription to, or indebtedness payable on capital stock of any company, whether incorporated or unincorporated; and I further swear that since the first day of April of last year, I have not directly or indirectly, converted or exchanged any of my property temporarily, for the purpose of evading the assessment thereof for taxes, into non-taxable property, or securities of any kind.*

I further swear that I have to the best of my knowledge and judgment valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained for said property at private sale, and not at forced or auction sale.

_____

Subscribed and sworn to before me this ——— day of ———, 189—.

_____

Assessor.

By _____

Deputy.

(68)

1. All debts due to a *person domiciled* in this State are taxable to such person at the domicile. All debts due from him to persons not domiciled in this State on April first, unless in the hands of a resident agent, are not taxable, 68 Ind. 247; 108 Ind. 353. See § 6298, *note* 2.

2. The tax-payer may deduct his *bona fide* debts from all his moneyed capital and credits, except money on hand or on deposit, money loaned, bonds, and shares of stock in corporations; and the courts will take *judicial notice* of the fact that the moneyed capital from which the tax-payer may so deduct his debt is a material portion of the whole moneyed capital of the State, 107 Ind. 206; 40 Ind. 190.

3. In the assessment and taxation of *national bank stock*, the owners thereof, if they have no other moneyed capital or credits from which to deduct their *bona fide* debts, are entitled to deduct them from the assessed value of such shares of stock, notwithstanding the provisions of the tax law of 1881, 107 Ind. 206; 105 U. S. 322; 100 U. S. 543; 113 U. S. 689, S. C. 20 Cent. L. Jr. 309; 25 Fed. Rep. 749; 53 Wis. 436; 58 Cal. 133; 111 Ind. 240.

4. The phrase "*money at interest*," as used in the tax law, is the equivalent of "*money loaned*," 107 Ind. 206.

5. The *schedule* (§ 6336) controls in case of conflict with any portion of the tax law, 27 Ind. 206; 40 Ind. 190; 71 Ind. 512; 105 U. S. 322.

6. Under the tax law of 1872 a tax-payer had the right, in listing his personal property for taxation, to deduct from his "money at interest, either within or without the State," and "all other amounts," together constituting the "total amount of all credits" owned by him, his *bona fide* indebtedness, and to list the surplus only for taxation, 71 Ind. 512.

7. When an *appeal* will lie, 71 Ind. 512.

8. If a tax-payer gives notice to the assessor of his indebtedness, but such assessor fails to enter it upon the sworn list, notwithstanding the demand of the person assessed that he has the right to deduct from the value of his national bank stock, or paper credits, the amount of his *bona fide* indebtedness, and the officer still refuses to allow the deduction on the ground that it is not authorized by law; and afterwards such person makes a like demand on the city, town or county treasurer before paying his taxes, which is also refused, the assessment, to the extent of the deduction improperly denied, is erroneous, and the tax-payer is entitled to have the excess of taxes collected *refunded*, whether paid voluntarily or not, and without appearing before the board of review and there attempting to have the assessment corrected, 111 Ind. 240; 102 N. Y. 176, S. C. 55 Am. R. 796; 105 U. S. 305, 323. See also 113 U. S. 689; 23 Wall, 480; 100 U. S. 539; 101 U. S. 143, 153; 10 Biss. 503; 2 Flippin, 61.

9. In putting down "the credits due and owing," the tax-payer is not required to *itemize* them, but may put down the sum of them all, and his estimate of their value; but the assessor, to correct any error the tax-payer may fall into, or fraud he may design to perpetrate, may compel such tax-payer to exhibit to him a list of all notes, drafts, mortgages and judgments, held or owned by him, not for the purpose of listing them, but for the purpose of valuation. The assessor may even make the list if the owner refuses or neglects to do so, 107 Ind., p. 209.

10. The assessment list as evidence of ownership of property listed in replevin suits, 82 Ind. 75; 79 Ind. 554; 108 Ind. 182. But the value of the property can not be thus proved, nor his estimate thereof contradicted by the use of such schedules, 108 Ind. 182.

11. Schedule as evidence of ownership of property, see § 6283, *note;* § 6330, *note* 2; 75 Ind. 485. The list must be sworn to by the owner, 108 Ind. 353. The assessor and his deputies have the power to administer the oath, 108 Ind. 353. In an indictment under this section for *perjury* in falsely stating the amount of moneys and credits owned by the defendant, it must be stated that the defendant was taxable for such property in the township in which the list was made, either by alleging that he was a resident of such township on the first day of April, or by negativing the exception contained in § 6298, and thus showing, although he became a resident of the township after the first day of April, he had not been assessed upon his moneys and credits in the taxing district from which he had moved, 108 Ind. 353. An exact copy of the oath administered to the defendant must be set forth in the indictment; and if only the purport is set forth it will subject the indictment to a motion to quash, 74 Ind. 592; R. S. 1881, § 1749.

Sec. 6337. Mutes—Blind—Insane—Lists. 54. It shall be the duty of the assessor, at the time of assessing property, to ascertain and set down, in tables prepared for that purpose, a list of all persons in their respective townships who are deaf and dumb, blind, idiotic, or insane, setting forth the name, age, and sex of each, also the names of the father, mother, or guardian, and their post-office address; and, in addition, the assessor of the township wherein the county poor-house is located shall set down the number of incurably insane who are kept therein; which list they shall return to the county auditor at the same time they return the list of property. The said county auditor shall report the same to the chief of the bureau of statistics at the time of making their returns of the list of property; and said chief shall lay before the superintendents of the institution for the education of the blind, the insane, feeble-minded, and of the deaf and dumb, copies of the lists so made. (69.)

See R. S. 1881, § 5720.

[1881 S., p. 174. Approved April 14, 1881, and in force September 19, 1881.]

Sec. 6337*a*. Giving false list of taxables. 240. Whoever, when requested by the assessor, state, county or municipal, or any of his deputies, fails to give a true list of all his taxable property, or to take and subscribe any oath in that behalf, as required by law, or shall fix a fraudulent value, where an oath is not required, on on such property, upon conviction thereof, shall be fined not more than five hundred dollars nor less than ten dollars. [R. S. 1881, § 2150.]

See §§ 6339, 6341.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6339. False statement—Penalty. 55. If any person or corporation shall give a false or fraudulent list, schedule, or statement required by this act; or shall willfully fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable property which he is required to be listed under this act; or shall temporarily convert any part of his property into property not taxable, for the fraudulent purpose of preventing such property from being listed, and of evading the payment of taxes thereon,—he or it shall be liable to a penalty of not less than fifty dollars nor more than five thousand dollars, to be recovered in any proper form of action, in the name of the State of Indiana, on the relation of the prosecuting attorney. The assessor shall forthwith notify the prosecuting attorney of such delinquency or offense, and he shall prosecute such offender to final judgment and execution; and such fine, when collected, shall be paid into the county treasury, for the use of the county, and the prosecuting attorney shall receive ten per centum commission on all moneys so collected and paid in, and a docket fee of ten dollars, to be taxed and collected with

costs in such action. Absence from the township during the sixty days, without design to avoid the listing, or sickness during such period, shall be a sufficient defense to such prosecution. (71.)

1. Sufficiency of indictment, 17 Ind. 305. The indictment must allege that the defendant was of sound mind and of full age at the time of refusal, and a resident of the township, and was the owner of the property named, on April 1, 72 Ind. 285; 17 Ind. 305; 74 Ind. 592; 108 Ind. 132.

2. This section is constitutional, and it and § 6337*a* do not inflict double punishment, 108 Ind. 132; 116 Ind. 162, 515; 117 Ind. 477; 119 Ind. 555.

3. The notice is no part of the offense, and need not be averred, 116 Ind. 132. The prosecution can not be by indictment, 116 Ind. 514; 117 Ind. 477. The action survives and may be brought against his administrator, 119 Ind. 555; R. S. 1881, § 283.

Sec. 6340. Assessor's valuation. 56. In every case where any person shall refuse to make out and deliver to the proper assessor the statement required under this act, or shall refuse to take and subscribe to any of the oaths and affirmations required by this act, the assessor shall proceed to ascertain the number of each description of the several enumerated articles of property and the value thereof; and, for this purpose, he may examine, on oath, any person or persons whom he may suppose to have a knowledge thereof; and such assessor shall make a note of such refusal in a column opposite the person's name, and the county auditor shall add to such valuation, when returned by the assessor, fifty per centum on the value so returned. (72.)

Sec. 6341. Penalties. 57. If any person required by the assessor to give evidence, as provided in the preceding section; or, in any case when interrogated by the assessor as to any property, real or personal, of himself or others, shall refuse to be sworn or to affirm; or, if having been sworn or affirmed, he shall refuse to answer the interrogatories hereinbefore set out, or any other questions touching the subject of inquiry,—such person, upon conviction thereof, shall be fined in any sum not more than five hundred dollars nor less than ten dollars, to which may be added imprisonment in the county jail not exceeding six months. (73.)

See § 6337*a*.

Sec. 6342. Sickness or absence—Proceedings. 58. When any person shall have been prevented from making and verifying his statement by reason of sickness or absence from the county during the sixty days, and the assessor shall have made a statement for him, he may, at any time before the assessment of taxes thereon by the county auditor, make, verify, and file with the county auditor the proper statement; but, in such cases, before the auditor shall receive such statement, the person making the same must add to the ordinary affidavit a statement to the effect that his failure to give the assessor such statement was occasioned by his

sickness or absence, and, if from absence, that such absence was without design to avoid the listing of his property; and on the filing of such statement, the auditor shall correct the statement made by the assessor. (74.)

See § 3071.

ARTICLE 8—BANKS AND BANKERS.

SEC.		SEC.	
6343.	Statement—Contents.	6347.	Entry of valuation.
6344.	Bank shares—Rate of tax.	6348.	Tax, when lien on shares.
6345.	Statement—Manner of listing.	6349.	Bank to retain dividends.
6346.	Auditor to compel statement.	6350.	Municipal taxing.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6343. Statement—Contents. 59. Every company, association, or person not incorporated for banking purposes under any law of this State or the United States, who shall keep an office or other place of business, and engaged in the business of lending money, receiving money on deposit, buying or selling bullion, bills of exchange, notes, bonds, stocks or other evidences of indebtedness, with a view to profit, shall, between the first day of April and the first day of June of each year, make out and furnish to the assessor, a statement setting forth and showing, with reference to the first day of April of the current year—

First. The amount of money on hand, other than United States treasury-notes, and the amount of money in transit.

Second. The amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft.

Third. The value of checks or other cash items not included in any of the preceding items.

Fourth. The amount of bills receivable, discounted, or purchased, and other credits due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid; and all notes secured by mortgage; also, the value of such bills receivable, notes and other credits.

Fifth. The amount of bonds and stocks of every kind, and shares of capital stocks of joint-stock or other companies or corporations, held as an investment or [in] any way representing assets, showing those that are exempt from taxation, if any, and also those subject to taxation and the amount of each; also the value of such bonds, stocks and shares.

Sixth. All other property appertaining to said business, other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act).

Seventh. The amount of all deposits made by other parties.

The aggregate amount of the first, second, and third items in the said statement shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal prop-

erty is listed under this act. The amount of the seventh item shall be deducted from the aggregate amount of the fourth item of said statement; and the value of the remainder, if any, shall be listed as credits. (75.)

1. See § 3254, *notes*.

2. Real estate owned by a bank should be assessed for taxation as realty in the township where situated, and not as a part of the capital stock of the bank, 85 Ind. 341.

Sec. 6344. Bank shares—Rate of tax. 60. The shares of capital-stock in any bank located within this State, whether organized under the laws of this State or of the United States, shall be assessed to the owner thereof in the township, city, or town where such bank or banking association is located, and shall be taxed at the same rate as other personal property in the same locality is taxed, and with reference to its value on the first day of April of the current year. (76.)

See § 3254, *notes*. The fact that stock of the old state bank is not taxable does not exempt national banks, 48 Ind. 568.

Sec. 6345. Statement—Manner of listing. 61. The president, cashier, or other accounting officer of such bank or banking association shall, between the first day of April and the first day of June of each year, make out a statement, under oath, in duplicate, showing the number of shares comprising the capital-stock of such bank, and the name and residence of each stockholder, with the number of shares owned by such stockholder in such bank; and he shall affix what he deems the true cash value of each of said shares, and also the true cash value of the entire capital-stock of such bank or banking association on the first day of April, and shall deliver one of such statements to the assessor in the township wherein such bank or banking association is located, and the other to the county auditor; and such capital-stock shall, thereupon, be listed and assessed by the assessor, and return thereof made in all respects the same as similar property belonging to other corporations and individuals. And whenever any such bank shall have acquired real estate or other tangible property, the assessed value of such real estate or tangible property shall be deducted from the valuation of the capital-stock of such bank. In making such statement of the true cash value of such shares, the credits shall be given and the *bona fide* indebtedness of such bank deducted therefrom, as in the case of individuals. The assessor shall determine and settle the true cash value of each share of stock, after an examination of such statement; and, also, an examination, under oath, of such officer, if he deem it necessary; and in determining and fixing the true cash value of each of said shares of stock, he shall be governed by the market or usual selling price of such stock at private sale at the place where the bank

is located; and, if there is no market value, he shall determine the actual value, taking into consideration the surplus and individual profits, if any, just as he would with respect to other moneyed capital in the hands of individual citizens of this State. (77.)

1. The auditor is required to give a certified copy of this statement to any city or town demanding it, §§ 3255, 3256. How valued, § 3260.

2. The fact that this section requires an officer of the bank to list the stock does not render the act void in the case of a national bank. So the requirements of this section that the stock shall be listed at the place where the bank is located does not render it invalid, even though the owner of the stock live elsewhere, 33 Ind. 107, 111. See § 3254.

Sec. 6346. Auditor to compel statement. 62. In case of the failure or refusal of the president, cashier, or other proper accounting officer of such bank to make and return such duplicate statements within the time aforesaid, the auditor of the proper county shall summon such officer to appear forthwith, before him, with the books of such bank or banking association; and said auditor is hereby empowered to compel the attendance of said officers in obedience to such summons, and to examine them under oath, and make such investigation, at the expense of such bank or banking association, as may enable him to obtain the information provided for in the preceding section. (78.)

See 5 Ind. 310.

Sec. 6347. Entry of valuation. 63. The county auditor shall enter the valuation of such capital-stock on the tax-duplicate of the current year, and shall compute and extend taxes thereon the same as against the valuation of other property in the same township, town, or city. (79.)

Assessment by city or town, § 3257.

Sec. 6348. Tax, when lien on shares. 64. Taxes assessed upon shares of bank-stock shall become a lien thereon upon the first day of April of the current year; and such lien shall be in nowise affected by any sale or transfer of such stock. Such taxes shall be paid by the owner or holder thereof in the same manner that other individuals or corporations pay their taxes, and subject to the same penalties. (80.)

See § 3259.

Sec. 6349. Bank to retain dividends. 65. It shall be the duty of every such bank or the managing officer or officers thereof, after being notified in writing to do so by the county treasurer, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any tax levied upon their shares of stock, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid. And any officer of any such bank who shall pay over or authorize the

paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; or the bank may pay the tax due from any of its shareholders, and retain the amount thereof, with interest, from any subsequent dividend. (81.)

See § 3258.

SEC. 6350. Municipal taxing. 66. Nothing in this act shall be so construed as to exempt from taxation for municipal purposes the shares of capital-stock of any bank or banking association organized under the laws of this State or the United States, but all such shares of stock may be assessed and taxed, for all purposes, at the same rate that other personal property is assessed and taxed in the same locality. (82.)

See § 3254, and *notes*. Also 16 Ind. 105; 22 Ind. 204.

ARTICLE 9—FOREIGN CORPORATIONS.

SEC.
6351. Insurance companies.
6351*a*. Laws of other States.
6352. Express companies.
6353. Telegraph companies.
6354. Telephone companies.
6355. Sleeping car companies.
6356. Bridge and ferry companies.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6351. Insurance companies. 67. Every insurance company not organized under the laws of this State, and doing business therein, shall, in the months of January and July of each year, report to the auditor of state, under oath of the president and secretary, the gross amount of all receipts received in the State of Indiana on account of insurance premiums for the six months last preceding, ending on the last day[s] of December and June of each year next preceding, and shall, at the time of making such report, pay into the treasury of the State the sum of three dollars on every one hundred dollars of such receipts, less losses actually paid within the State. And any such insurance company failing or refusing, for more than thirty days, to render an accurate [account] of its premium receipts, as above provided, and [to] pay the required tax thereon, shall forfeit one hundred dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the auditor of state, in any court of competent jurisdiction. And it shall be the duty of the auditor of state to revoke all authority of any such defaulting company to do business within this State. (83.)

1. An action against an insurance company for a penalty or to collect taxes due from it may be brought in the name of the State, or upon the relation of the auditor or attorney-general of the State, 115 Ind. 257.

2. The State may impose upon *foreign insurance* companies, as a condition of coming into or doing business within its territory, any terms, conditions and restrictions that are not repugnant to the constitution and laws of the United States. It may impose the same tax upon them that their respective native States impose upon any insurance company of this State doing business in such other State although the rate thus charged is greater than is charged local domestic companies in this State, 115 Ind. 257, 291; § 6351*a*. But such retaliatory insurance law does not apply to cities and towns, 115 Ind. 291.

[1877, p. 65. Approved and in force March 3, 1877.]

SEC. 6351*a*. Laws of other States. 3. When, by the laws of any other State, any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed upon insurance companies of this or other States, or their agents, greater than are required by the laws of this State, then the same obligations and prohibitions, of whatever kind, shall, in like manner for like purposes, be imposed upon all insurance companies of such States and their agents. All insurance companies of other nations, under this section, shall be held as of the State where they have elected to make their deposit and establish their principal agency in the United States. [R. S. 1881, § 3773.]

See § 6351, *notes*.

1. This section is *constitutional;* and money due under it may be recovered in the name of the State or upon the relation of the attorney-general or auditor of the State, 115 Ind. 257, 291, 596; 29 Kan. 672. In such an action the statutes of other States referred to must be pleaded and proved, 115 Ind. 257.

2. This section has no application to cities or towns, and does not authorize them to recover from foreign insurance companies, for the use of its fire department, a per cent. of the premiums received from risks taken upon property within the municipality, as provided by the laws of the States where such companies were incorporated, or where, being organized abroad, it has its principal agency, as the entire regulation of such companies and the collection of taxes therefrom are committed by the laws of the State to the state officers, 115 Ind. 291.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6352. Express companies. 68. Any joint stock association, company or corporation incorporated under the laws of any other State conveying to, from or through this State, or any part thereof, money, packages, gold, silver, plate or other articles by express or contract with any railroad company or the managers, lessees, agent, or receiver thereof not including railroad companies engaged in the ordinary transportation of merchandise and property in this State, shall be deemed to be an express company, and every such express company shall annually, between the first day of April and the first day of May, make and deliver to the auditor of state a statement verified by the oath of the officer or agent making such report, showing the entire receipts of each agent of such company doing business in this State for the year then next preceding the first day of April for and on account of such company including its proportion of gross receipts for business done by such company in connection with other companies: *Provided,* That the

amount which any express company actually pays to the railroads within this State for the transportation of their freight within this State and the amount of wages paid to employes within this State and the amount paid for the purchase of tangible property within this State, may be deducted from the gross receipts of such company as above ascertained: *And, provided further*, That nothing herein contained shall release such express companies from the assessment and taxation of their tangible property in the manner that other tangible property is assessed and taxed. Such company making statement of such receipt shall include as such all sums earned or charged of the business of such preceding year whether actually received or not, such statement shall contain an abstract of the amount received in each county and the total amount received for all the counties. In case of the failure or refusal of such express company to make such statement before the first day of May it shall then be the duty of each local agent of such express company within this State annually between the first day of May and the first day of June to make out and forward to the auditor of state a similar verified statement of the gross receipts of his agency for the year then next preceding the first day of April. When such statement is made such express company shall at the time of making the same, pay into the treasury of the State the sum of one dollar on each one hundred dollars of such receipts. And any such express company failing or refusing for more than thirty days after the first day of June in each year to render an accurate account of its receipts in the manner above provided and to pay the required tax thereon, shall forfeit one hundred dollars for each additional day such statement and payment shall be delayed to be recovered by an action in the name of the State of Indiana on the relation of the auditor of state in any court of competent jurisdiction, and the attorney-general shall conduct such prosecution; and such company, corporation, or association so failing or refusing, shall be prohibited from carrying on said business in this State until such payment is made. (84.)

Sec. 6353. Telegraph companies. 69. Any joint stock association or corporation engaged in transmitting to, from, through, or in this State telegraphic messages, and incorporated under the laws of any other State, shall be deemed and held to be a telegraph company and every such telegraph company shall annually between the first day of April, and the first day of May, make and deliver to the auditor of state, a statement verified by the oath of the officer, or agent of such company making such report, showing the entire receipts of each agent of such company doing business in this State for the year then next preceding the first day of April for and on account of such company including its proportion of gross receipts for business done by such company in connection with the lines of other companies: *Provided*, That nothing herein contained shall release such telegraph companies from the assess-

ment and taxation of their tangible property in this State in the manner that other tangible property is assessed and taxed, such company in making statement of such receipts shall include as such all sums earned or charged of the business for such preceding year, whether actually received or not. Such statement shall contain an abstract of the amount received in each county and the total amount received for all the counties. In case of the failure or refusal of such telegraph company to make such statement before the first day of May, it shall then be the duty of each local agent of such local telegraph company within this State annually between the first day of May and the first day of June to make out and forward to the auditor of state a similar verified statement of the gross receipts of his agency for the year then next preceding the first day of April. When such statement is made such telegraph company shall at the time of making the same pay into the treasury of the State, the sum of one dollar on each one hundred dollars of such receipts, and any such telegraph company failing or refusing for more than thirty days after the first day of June in each year to render an accurate account of its receipts in the manner above provided, and to pay the required tax thereon shall forfeit one hundred dollars for each additional day such statement and payment shall be delayed, to be recovered by an action in the name of the State of Indiana, on the relation of the auditor of state in any court of competent jurisdiction, and the attorney-general shall conduct such prosecution, and such company, corporation or association so failing or refusing shall be prohibited from carrying on said business in this State until such payment is made. (85.)

SEC. 6354. **Telephone companies.** 70. Every telephone company doing business in this State and incorporated under the laws of any other State, shall annually between the first day of April and the first day of June report to the auditor of state under oath of an officer or agent of such corporation the gross amount of all their receipts in the State of Indiana for the year immediately preceding the first day of April and shall at the time of making such report, pay into the treasury of the State the sum of twenty-five cents, on every one hundred dollars of such receipts, and any such telephone company failing or refusing for more than thirty days after the first day of June to render an accurate account of such gross receipts, as above provided, and pay the required tax thereon shall forfeit ten dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the auditor of state, in any court of competent jurisdiction, and the attorney-general shall conduct such prosecution; and such telephone companies so failing or refusing shall be prohibited from carrying on said business until such payment is made. (86.)

Sec. 6355. Sleeping car companies. 71. Every joint stock association, company, or corporation, incorporated under the laws of any other State, and conveying to, from and through this State, or any part thereof, passengers and travelers in palace cars, drawing room cars, sleeping cars, or chair cars, on contract with any railroad company, or the managers, lessee, agent or receiver thereof, shall be held and deemed to be a sleeping car company; and every such sleeping car company doing business in this State shall, annually, between the first day of April and the first day of June, report to the auditor of state, under oath of an officer or agent of such corporation, the gross amount of all their receipts within or without the State, for fares earned or business done by such company within this State, for the year then next preceding the first day of April of the current year; and in computing such gross receipts, the same shall be in the proportion that the distance traveled in this State bears to the whole distance paid for. At the time of making such report, such company shall pay into the treasury of the State the sum of two dollars on every one hundred dollars of such receipts, and every sleeping car company failing or refusing for more than thirty days after the first day of June, to render an accurate account of such gross receipts, as above provided, and pay the required tax thereon, shall forfeit twenty-five dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the auditor of state, in any court of competent jurisdiction, and the attorney-general shall conduct such prosecution, and such sleeping car companies so failing or refusing shall be prohibited from carrying on such business until such payment is made; and all railroad companies in this State, or the persons managing or operating the same, are prohibited from hauling any cars of any sleeping car company while so in default; and for each violation of this prohibition shall be liable to pay to the State of Indiana the sum of one hundred dollars, to be recovered in the proper action by the State. And it shall be the duty of the attorney-general, at the request of the auditor of state to prosecute all such suits. (87.)

Sec. 6356. Bridge and ferry companies. 72. Every bridge company and ferry company not organized under the laws of this State, and doing business therein, shall, between the first day of April and the first day of June of each year, report to the proper assessor of the county in which any part of the business of such company is carried on, under the oath of the agent or superintendent of such company doing business in said county, the gross amount of all moneys received by such agent or superintendent on account of such company, and for the year then next preceding the first day of April of the current year; and failing or refusing to do so, such company shall forfeit and pay one hundred dollars for each addition-

al day such report is delayed beyond the first day of June, to be sued for and recovered as in case of express, telegraph, and telephone companies: *Provided*, Such report shall also contain a list of the tangible property of such company or corporation within the county, and the true cash value thereof. The amount of such gross receipts shall be reported by such assessor to the county auditor, and shall be, by such auditor, entered, together with the true cash value of such tangible property, upon the tax duplicate of the proper county; and the taxes so assessed shall be a lien upon the property of such companies until the same are paid. (88.)

ARTICLE 10—DOMESTIC CORPORATIONS.

SEC.
6357. Sworn statement.
6358. Schedule.
6359. Failure—Duty of auditor of state.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6357. Sworn statement. 73. Every street-railroad, waterworks, gas, manufacturing, mining, gravel-road, plank-road, savings-bank, insurance, and [all] other associations incorporated under the laws of this State (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital-stock, setting forth particularly—

First. The name and location of the company or association.

Second. The amount of capital-stock authorized, and the number of shares in[to] which such capital-stock is divided.

Third. The amount of capital-stock paid up.

Fourth. The market value (or, if no market value, then the actual value) of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The valuation of all tangible property.

Seventh. The difference in value between all tangible property and the capital-stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. In [any] case of failure or refusal to make [the] report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first day of June, to be sued [for] and recovered, in any proper form of action, in the name of

the State of Indiana, on the relation of the prosecuting attorney. And such prosecuting attorney, in every case of conviction, shall be allowed a docket-fee of ten dollars, to be taxed as costs in such action. (89.)

This section contains a sufficient *notice* to the corporation that the board will act on its statement and assess the stock. If the entire capital-stock is invested in tangible property, the stock can not be assessed, 26 N. E. Rep. 672.

SEC. 6358. **Schedule—Valuation.** 74. Such statement shall be scheduled by the assessor, and such schedule with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review lay before said board the schedule and statements herein required to be returned to him and said board shall value and assess the capital-stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital-stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital-stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital-stock has a value, it shall be assessed for its true cash value. But where the capital-stock or any part thereof is invested in tangible property, returned for taxation, such capital-stock shall not be assessed to the extent that is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital-stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital-stock, then the franchise shall be assessed at its full cash value, and the capital-stock in such case shall not be assessed. (90.)

SEC. 6359. **Failure—Duty of auditor of state.** 75. In case of the failure or refusal of the persons, joint-stock associations, companies, or corporations, their officers, agents, or employes, specified in the preceding section[s], to make and return the statements and reports therein provided for, the auditor of state shall make out such returns, statements, and valuations from the best information he can obtain; and for that purpose he shall have power to summon and examine, under oath, any person whom he may believe to have a knowledge thereof. And he shall add to such valuation twenty-five per centum thereon. (91.)

ARTICLE II—RAILROADS.

SEC.
6360. Time of listing.
6361. Sworn statement.
6362. Railroad track.
6363. Value, how apportioned.
6364. Rolling-stock.
6365. Other personalty.
6366. Other realty.
6367. Inventory by company.
6368. Auditor's return to assessor.
6369. Sworn statement.
6370. Penalty for neglect.
6371. Report to state board of equalization.
6372. Valuations entered.
6372*a*. Lien for taxes and debts.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6360. Time of listing. 76. Every person, company, or corporation, owning, managing, operating, or constructing a railroad in this State, shall cause all [its] taxable property, not including property specifically taxed, to be listed, with reference to its amount, kind, and value, on the first day of April of the year in which it is listed. (92.)

Formerly a railroad company of this State leasing the railroad running through or into this State of a foreign company could not be taxed on the stock of such foreign company; nor could such foreign company be assessed with its road-bed or personal property, for the statute then required all such to be listed as corporation stock, 17 Ind. 380. Valuation under old law, 25 Ind. 177. The rules for assessing the property of individuals do not apply to railroads, 69 Ind. 71.

6361. Sworn statement. 77. Between the first day of April and the first day of June of the year 1892, and at the same time in each year thereafter, when required by the county auditor[s], any person, company or corporation, so owning, managing, operating, or constructing a railroad, shall make and file with the county auditor[s] of the respective counties in which the railroad may be located, a statement or schedule, verified by the oath of such person, or the president and secretary of such corporation, showing the property held for right-of-way, and the length of the main [track] and all side or second tracks and turnouts in such county, and in each city or town in the county through or into which the road may run, and describing each tract of land, other than a city or town lot, through which the road may run, in accordance with the United States or other surveys, giving the width and the length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right-of-way. New companies shall make such statement[s] in April next after the location of their roads. When such statement[s] shall have been once made, it shall not be necessary to report the discription as hereinbefore required, unless directed so to do by the county auditor[s]; but the company shall, during the month of April, annually, report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right-of-way as shall have occurred. (93.)

Sec. 6362. Railroad track. 78. Such right-of-way, including the superstructures, main [track], side or second track[s], and turnouts, turntable[s], telegraph poles, wires, instruments, and other appliances, and the stations and improvements of the railroad company on such right-of-way (excepting machinery, stationary engines, and other fixtures, which shall be considered personal property), shall be held to be real estate for the purpose of taxation, and denominated "railroad track," and shall be so listed and valued, and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses a boundary line in entering the county, township, city, or town, tending to the point where such track crosses the boundary line leaving such county, township, city, or town to the point of termination in the same, as the case may be, containing —— acres, more or less (inserting name of county, township, city, or town, or boundary line of same, and number of acres and length in feet); and when advertised or sold for taxes, no other description shall be necessary to convey a good title to the purchaser. (94.)

The railroad track and rolling-stock is assessed and valued by the state board of equalization, 108 Ind. 144; § 6410. The right of way, with the improvements upon it, is to be valued and assessed as "railroad track," 108 Ind. 144. The "right of way" is not limited to a strip of land of any definite width at all points on the line of railroad, but includes lands and lots acquired for necessary side-tracks and turnouts, and the improvements thereon in the way of coal-sheds, freight houses, water-tanks, repair shops, round-houses, and the like, 108 Ind. 144; 50 Wis. 71; 98 Ill. 350. Practice under the old law, 69 Ind. 71. Railroad iron, possibly, not laid down, must be assessed under these sections, and can not be assessed by the county board of review, 118 Ind. 214.

Sec. 6363. Value, how apportioned. 79. The value of [the] "railroad track" shall be listed and taxed in the several counties, townships, cities, or towns in the proportion that the length of the main track in such county, township, city, or town bears to the whole length of the road in this State; except the value of the side or second track[s], and all the turnouts, and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county, township, city, or town in which the same are located. (95.)

Sec. 6364. Rolling-stock. 80. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, "rolling-stock." Such rolling-stock shall be listed and taxed in the several counties, townships, cities, and towns, in the proportion that the main track used or operated in each county, township, city, or town bears to the length of the main track used or operated by such person, company, or corporation, whether owned, operated, or leased by him or them, in whole or in part. (96.)

The legislature has the power to treat rolling-stock either as real or personal property for the purposes of taxation, 25 Ind. 177. Rolling-stock is valued and assessed by the state board of review, 108 Ind. 144; § 6410.

Sec. 6365. Other personalty. 81. All [other] personal property of any railroad, except that specifically taxed and including the tools and material for repairs, machinery, fixtures, and stationary engines, shall be listed and assessed in the county, township, city, or town wherever the same may be on the first day of April of each year. (97.)

Sec. 6366. Other realty. 82. All real estate of any railroad company, other than that denominated "railroad track," with all the improvements thereon, shall be listed as lands and lots, as the case may be, in the county, township, town, or city where the same are located. In describing such real estate wherever a railroad company shall have made or makes and records a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat. (98.)

Sec. 6367. Inventory by company. 83. Between the first day of April and the first day of June of each year, every person, company, or corporation, owning, constructing, or operating a railroad in this State, shall return to the county auditor[s] a list or schedule, verified by the oath of such person so owning, constructing, or operating, if an individual (or, if a company or corporation, by the oath of the superintendent or secretary of such company or corporation), which shall contain—

First. A full and correct detailed inventory of all the rolling-stock belonging to, or leased, hired, used, or operated by, such company, and which shall distinctly set forth the number of locomotives and tenders of all classes, passenger cars of all classes, sleeping, chair, and dining cars, express cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, freight cars, flat cars, pay cars, hand cars, tank or oil cars, and all other kinds of cars; and the true cash value thereof on the first day of April of the current year shall be set opposite each of them. Such list or schedule shall also set forth the number of miles of main track on which such rolling-stock is used in the State of Indiana. For the purpose of taxation, such rolling-stock leased or hired from persons or corporations other than railroad companies shall be deemed the property of the railroad company leasing the same, and for that purpose shall be valued at such proportion of the full value thereof, as the time during which the same is used on such railroad during any year bears to the whole year.

Second. Such list shall, also, contain a full and correct inventory of all the other personal property of such railroad company not specifically taxed, including the tools and materials for repairs, the machinery, fixtures, and stationary engines; and such property

shall be classified and separated into the particular county [counties], township [townships], cities, and towns, wherein the same may be on the first day of April, with the true cash value thereof on the first day of April of the current year.

Third. Such list shall also contain an inventory of all the real estate (other than that denominated "railroad track") owned by the said railroad company on the first day of April of the current year. Such property shall also [all] be listed, with reference to the amount, kind, and value, on the first day of April of the year in which it is listed. (99.)

Sec. 6368. Auditor's return to assessor. 84. The county auditor, as soon as he receives such list, shall return to the proper assessor a copy of so much of said list as is contained in the second and third specifications thereof; and such property shall be listed and assessed by such assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other simillar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots," and "personal property." (100.)

Sec. 6369. Sworn statement. 85. At the same time that the lists or schedules as [are] hereinbefore required to be returned to the county auditor[s,] the person, company, or corporation running, operating, or constructing any railroad in this State, shall, under the oath of such person, or the secretary or superintendent of such company or corporation, return to the auditor of state sworn statements or schedules as follows:

First. Of the property denominated "railroad track," giving the length of the main [track,] and side or second tracks, and turnouts, and showing the proportions in each county and township, and the total in the State.

Second. The rolling-stock, whether owned or hired, giving the length of the main track in each county, and the entire length of the road in this State.

Third. Showing the number of ties in track per mile; the weight of iron or steel per yard used in the main and side tracks, what joints or chairs are used in track; the ballasting of road, whether gravel, stone, or dirt; the number and quality of buildings or other structures on "railroad track"; the length of time iron or steel in track has been used; and the length of time the railroad has been built.

Fourth. A statement or schedule showing—(1) The amount of capital-stock authorized, and the number of shares into which such capital-stock is divided; (2) the amount of capital-stock paid up; (3) the market value (or, if no market value, then the actual value) of the shares of stock; (4) the total amount of all indebtedness, except for current expenses for operating the road; [and]

(5) the total listed valuation of all its tangible property in this State.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. (101.)

Sec. 6370. Penalty for neglect. 86. If any person, company, or corporation, owning, operating, or constructing any railroad, shall neglect or refuse to return to the county auditor[s] the statements or schedules required to be returned to them, the property so to be returned to them, and assessed by the assessors, as above specified, shall be listed and assessed as other property. In case of failure to make returns to the auditor of state, as hereinbefore provided, the auditor of state, with the assistance of the county auditors and assessors (when he shall require such assistance), shall ascertain the necessary facts, and lay the same before the state board of tax commissioners. In case of failure to make such statement, either to the county auditors or auditor of state, such corporation, company, or person shall forfeit, as a penalty, not less than one thousand dollars nor more than five thousand dollars for each day's omission after the first day of June of each year, to be recovered, in any proper form of action, in the name of the State of Indiana, on the relation of the attorney-general, and paid into the state treasury. Such attorney-general shall conduct such prosecution, and be entitled to ten per centum on the amount of the judgment so recovered and paid in. (102.)

Sec. 6371. Report to state board of equalization. 87. The auditor of state shall, annually, on the meeting of the state board of tax commissioners, lay before said board the statements and schedules herein required to be returned to him; and said board shall assess such property in the manner hereinafter provided. (103.)

Equalizations and assessments of railroad property, subsequent to 1859, and prior to December 21, 1865, were legalized by an act of 1865 (S., p. 121).

Sec. 6372. Valuations entered. 88. The county auditor shall enter the railroad property of all kinds, as listed for taxation, upon the proper tax-duplicate, and shall enter the valuation as assessed, corrected, and equalized in the manner provided by this act; and against such assessed, corrected, or equalized valuation, as the case may require, the county auditor shall compute and extend all taxes for which said property is liable. And the county treasurer shall collect the taxes charged against said railroad property, and pay over and account therefor in the same manner as other taxes are collected and accounted for. (104.)

Cities and towns obtain from the county auditor the valuation of so much per mile of the railroad as lies within their limits. The taxation by the city or town must be by the mile as assessed by the state board of tax commissioners even though large and costly buildings are built on the right of way within such city or town. Thus if there are two miles of right of way within the city and

the assessment by the state board is $10,000 per mile, then the city or town can levy a tax only on $20,000 worth of track, although large and costly buildings many times that amount in value are situated upon such right of way.

[1 R. S. 1852, p. 409. Approved May 11, 1852, and in force May 6, 1853.]

Sec. 6372*a*. Lien for taxes and debts. 26. The State shall have a lien upon all railroads of such corporations, and of their appurtenances and stock therein, for all penalties, taxes, and dues which may accrue to the State from such corporations; which lien of the State shall have precedence of all demands, judgments, or decrees against said corporations. And the citizens of this State shall have a lien upon all personal property of said corporations, to the amount of one hundred dollars, for all debts originally contracted within this State; which, after said lien of the State, shall take precedence of all other debts, demands, judgments or decrees, liens or mortgages against such corporations. [R. S. 1881, § 3919.]

ARTICLE 12—BUILDING ASSOCIATIONS.

SEC.
6373. Statement—Tax.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6373. Statement—Tax. 89. Building, loan-fund and saving associations shall be listed and assessed in the following manner: Before the first day of June of each year, the secretary of every building, loan and savings association shall file with the auditor of the county in which such association was organized, a duplicate statement verified by said secretary, showing the amount paid into said association by shareholders upon shares of stock issued by it up to the first day of April preceding and then outstanding, and also the amount loaned up to said date, to shareholders, and secured by mortgage upon real estate listed for taxation. And the auditor shall deliver said statement to the proper assessor, who shall proceed to assess said association for taxation with the amount shown to have been paid into said association up to said first day of April upon outstanding shares of stock, less the amount shown by the statement to have been loaned to shareholders upon said mortgage security so listed for taxation, and neither said association nor the shareholders therein shall be liable to other taxation upon said shares of stock. (105.)

ARTICLE 13—DUTIES OF TOWNSHIP ASSESSOR.

SEC.
6374. Election—Oath—Bond—Vacancies.
6375. Deputies.
6376. Compensation.
6376*a*. Same continued.
6376*b*. Laws repealed.
6377. Auditor to deliver list of lands to assessor—Blanks.
6378. List to owners—Notice.
6379. Realty, how valued.
6380. Buildings on rights-of-way.
6381. Mines and quarries.
6382. Assessor's powers.
6383. Land—Rule as to quantity.
6384. Values, how affixed.
6385. Assessor's return-book.
6386. Assessor's oath.
6387. Memorandum to owner.
6388. Quadrennial assessments.
6389. Tabular list to auditor—Contents.
6390. Correction of errors.
6392. City and town plats.
6393. Omitted property—Assessor's duty.
6394. Irregularities not to vitiate.
6395. Assessor to return statements.
6396. Assessor failing to swear parties—Penalty.
6396*a*. County assessor.
6396*b*. Duties of county assessor.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6374. Election—Oath—Bond—Vacancies. 90. For the purpose of listing and assessing all property for taxation, there shall be elected at the township election in the year 1894, and every four years thereafter, in each township of the several counties in this State, an assessor for such township, who shall hold his office for the term of four years from the first Monday in August, and until his successor is elected and qualified. Within ten days after the beginning of his term, he shall give bond, with at least two good and sufficient freehold sureties, to the acceptance of the county auditor, in the sum of three thousand dollars, payable to the State of Indiana, and conditioned for the faithful and impartial discharge of his duties according to law, and shall take and subscribe an oath or affirmation, to be indorsed on his bond, that he will faithfully, honestly, and impartially discharge the duties of his office to the best of his skill and ability; and the bond, so indorsed, shall be deposited with the county auditor; and the said auditor is hereby authorized to administer the oath of office aforesaid. If such bond and oath are not given and filed in the county auditor's office within said ten days, the office shall be vacant, and the county auditor shall at once fill such vacancy by appointment; and such appointee shall give the bond and take the oath above required. And if, from any other cause, a vacancy should occur in said office in any township, at any time, the county auditor shall fill such vacancy by appointment; and the person so appointed shall qualify as herein required. All township assessors last elected or appointed shall continue in office until the next township election, and until their successors are elected and qualified under this act, at the same rate and limit of compensation as herein provided. Persons holding the office of township assessor on the taking effect of this act shall not be eligible to said office at said township election in 1894; and hereafter no person shall be eligible to the office of township assessor more than four years in any period of eight years. The oath of office to be taken by said assessor and indorsed upon his bond shall be in the words following:

State of Indiana, County of . . . , *ss.*

I, ... do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Indiana, that I will faithfully, impartially, and honestly discharge the duties of my office as township assessor, particularly that I will assess all property assessed by me at its true cash value, as such value is defined in section 53 of the act concerning taxation, according to my best knowledge and judgment, so help me God.

. . . . . .

Subscribed and sworn to before me this . . . day of . . . , 189 . .

. . . . . , County Auditor.

All deputy assessors shall be sworn in like manner. (106.)

In cities the office has been abolished, and the assessment of property taken from the office of the county auditor, § 3262. The office in towns is abolished, § 3262.

Sec. 6375. Deputies. 91. Whenever a[ny] township assessor shall be unable to complete the duties required of him within the time designated by law, he may appoint one or more suitable and competent persons as deputies, to assist him in making the assessment; and he may designate the portion[s] of the township, town, or city in which they shall act. Such deputies shall make their return to the proper assessor. (107.)

Sec. 6376. Compensation. 92. For their services, the township assessors shall receive as compensation two dollars per day for the time actually employed in the duties of their office, not exceeding sixty days in any one year, to be paid to them from the county treasury, upon the warrant of the county auditor, and they shall receive no extra allowances for services. Their deputies shall also receive two dollars per day for each day they are actually employed: *Provided*, That nothing in this section shall be taken to alter or repeal any of the provisions of an act fixing the salaries of county commissioners, township assessors and trustees, approved March 6, 1889. [§ 6376*a*.] (108.)

[1889, p. 186. Approved and in force March 6, 1889.]

Sec. 6376*a*. Same continued. 2. That each trustee of any township in this State, and each assessor of any township in this State, shall receive for the time he is necessarily engaged in the discharge of his duties, the sum of two dollars per day, and this shall be full compensation for all services that they shall in any capacity and in any manner perform: *Provided*, That in townships containing a population of seventy-five thousand, as shown by the last census, each trustee and assessor shall each receive the sum of eighteen hundred dollars per annum, and such sum shall be deemed to be payment in full for all services of whatever kind they may perform

as such trustees or assessors: *Provided, further*, That in townships having a population of over twenty-five thousand, as shown by the last census, such trustee shall receive not less than one thousand dollars nor more than fifteen hundred dollars per annum, which amount is to be determined by the board of county commissioners of the county in which said township is situate, and such sum shall be deemed to be payment in full for all services of whatever kind they may perform as such trustee. Such township trustees and assessors shall keep their office open on each day of the year except Sundays and legal holidays. [El. Sup. § 1977.]

Sec. 6376*b*. Laws repealed. 3. All laws and parts of laws in conflict with the provisions of this act are hereby repealed. [El. Sup. § 1978.]

[1891 S., p. 199. Approved and in force March 6, 1891.]

Sec. 6377. Auditor to deliver list of lands to assessor—Blanks. 93. The county auditor of each county shall, on or before the first day of April in each year in which [the] realty is assessed, make out and deliver to the assessors, by civil townships, lists of all lands, [and] town and city lots entered on the duplicate of the preceding and present year, noting thereon all transfers which may have been made subsequent to the making out of such duplicate; and shall also enter thereon all new entries and other lands, and city, town, and village lots lying within his county, which may come to his knowledge and not previously entered for taxation. And in so doing, when a whole section, half section, quarter section, or half-quarter section appears to belong to one owner, it shall be described in one description and shall be listed as one tract; and when all the lots in one block appear to belong to one owner, they shall be described in one description and listed as one block; [and] when several lots in the same block shall belong to the same owner, they shall, as far as practicable, be included in one description. And in making up the tax duplicates, it shall be the duty of the county auditors, as far as practicable, to preserve and perpetuate such consolidated descriptions. And it shall be the duty of said auditor to furnish the assessor[s] with all blanks necessary in the discharge of [their] his official duties; and he shall also, where the same have not been already prepared, prepare plats of each civil township of his county, divided into sections and quarter sections, and grant and other governmental subdivisions, and deliver the same to him [them] with said blanks; and it shall be the duty of said assessor[s] to designate, in pencil, the lands of each owner on such plats. When such plats have been once prepared, they shall be carefully preserved by the county auditor, to be used, whenever practicable, in future assessments. (109.)

1. Assessments of property and tax collections prior to March 3, 1859, were legalized by an act of 1859 (p. 225); appraisements of real estate made in 1864 were legalized by an act of 1865 (S., p. 172).

2. The auditor is not entitled to compensation for preparing the books and blanks for assessors, 84 Ind. 560.

Sec. 6378. List to owners—Notice. 94. The assessor shall call upon each and every person residing in his township for a list of all lands, city, village, and town in-lots and out-lots, owned by such person or persons, lying within his township, which may be subject to taxation, which list shall particularly set forth the names of the owners; the number of acres of land in each tract, lot, section, or subdivision thereof; the range, township, section, quarter section, tract, or lot, or part thereof, or the number of the entry, location, or survey, as the nature of the general or particular survey may require; and if the same can not be described by the congressional survey, then it shall be described by metes and bounds, so as to designate and identify the same, or by reference to a sufficient and correct description contained in some public record of the county, or by the number and designation as contained in some partition proceeding, identifying by book and page of record whenever practicable. When he makes such call, he must notify the person, company, or corporation of the duty to make out and return such list within five days. If he deems it necessary to obtain an accurate description of any separate lot or tract in his township, he may require the owner or occupant to exhibit all the title-papers he may have in his possession; and whenever the person called upon fails or refuses to furnish such list to such assessor, at his office or place of business, within five days after being called upon, the assessor shall make the list according to the best information he can obtain, and, for that purpose, he may examine, under oath, any person or persons whom he may suppose to have a knowledge thereof; and the county auditor shall add to such valuation, when returned, twenty-five per centum on the value so returned. To enable the county auditor to make such addition, the assessor shall enter in his return, in a column provided for that purpose, opposite the name of every person, company, or corporation required to list real estate, who has, after notice, failed or refused to furnish the list required, these words, "Failed (or refused) after notice." (110.)

See § 3072.

Sec. 6379. Realty, how valued. 95. Real property shall be valued by the assessor as follows: Lands, and the improvements and the buildings thereon or affixed thereto, shall be valued at their full true cash value, estimated at the price they would bring at a fair voluntary private sale, not a forced or sheriff's sale, taking into consideration the fertility of the soil, the vicinity of the same to railroads, macadamized roads, clay roads, gravel roads and turnpike roads, state or county roads, cities, towns, villages, navigable rivers, water privileges on the same or in the vicinity of the same, the location of the route of any canal or canals, with any

other local advantages of situation. In-lots and out-lots in all towns, cities, or villages, with the improvements thereon or affixed thereto, shall be valued at their full cash value as aforesaid, taking into consideration all the local advantages, upon actual view of the premises. All lands and lots shall also be listed at such valuation, without taking into consideration any improvements; and this valuation, as well as the valuation with the improvements, shall be set down in a proper column to be left for that purpose. (111.)

The assessment of the assessor and the equalization of the board of equalization is conclusive, and the auditor can not change it, 117 Ind. 410.

Sec. 6380. Buildings on rights-of-way. 96. When a building or structure is located on the right-of-way of any canal, railroad, or other company, leased or granted for a term of years to any other, the same shall be valued at such price as such building or structure and lease or grant would sell for at a private voluntary sale for cash. (112.)

Sec. 6381. Mines and quarries. 97. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same, if the land and the mine or quarry are owned by the same person, shall be valued at such price as such property, including the mine or quarry, would sell [for] at a private voluntary sale for cash. Where the mine or the quarry is owned or leased by a person other than the owner of the land, such land shall be valued, exclusive of the mine or quarry, as other lands are valued; and the mine or quarry, and all improvements and leasehold and appurtenances, shall be valued separately from the land, according to the true cash value thereof. (113.)

Sec. 6382. Assessor's powers. 98. For the purpose of enabling the assessor to determine the value of buildings and other improvements, he is hereby required to enter (after first making known his intention to the owner or occupant thereof) and fully examine all buildings and structures of whatever kind, which are not, by the laws of the State, expressly exempt from taxation. (114.)

Sec. 6383. Land—Rule as to quantity. 99. The assessor, in ascertaining or determining the quantity of land in the several tracts within his township, shall be governed by the following rules: Whenever the owner or person in whose name it is listed shall hold, by virtue of a deed from another party or from the State of Indiana, or by patent from the United States for congress land, such deed or patent, if the quantity be therein stated, shall be taken and received as evidence of the quantity in the tract described; but if such lands shall have been surveyed subsequent to the survey made by the United States, and it shall be proven, to the satisfaction of the assessor, that any such tracts of land contain a greater or less quantity than is described in the patent or

deed under which such lands are held, then the assessor shall charge the owner with the true quantity, as ascertained by such subsequent survey. If the owner or person in whose name any lands are listed within the French or Clark's Grant shall hold under an original entry or survey, with or without patents thereon, it shall be the duty of the assessor to require the said owners or holders to cause the same to be surveyed by the county surveyor, and to return the quantity under the certificate of said surveyor, attested by oath or affirmation, within ten days after said owners or holders shall have been called upon to list their lands for taxation; and if any such owner or holder shall refuse or neglect to survey and list his lands as herein provided, or if he, she, or they be non-residents of the township, then it shall be the duty of the assessor to cause such lands to be surveyed and returned to himself. The expense of which [such] survey shall be paid from the county treasury, and be, by the auditor of the county, assessed against such lands in the succeeding year, and collected in the same manner as taxes are collected thereon: *Provided*, That if any owner or holder of lands has had the same previously surveyed, and shall produce to the assessor a certificate of the survey other than that under the original entry of said lands, such survey shall be taken by the assessor; or if the assessor shall be satisfied, from other competent evidence, adduced to him under oath or affirmation, that the quantity returned is correct, and that no surplus exists in the original survey, he shall enter and return the same without further survey: *Provided*, That the assessor may deduct from the value of such tract of land owned by any person the value of the amount of [the] land occupied and used by any railroad, public highway, or canal at the time of such assessment. (115.)

The owner of land is not bound to cause the same to be surveyed until notified to do so by the proper officers. See 56 Ind. 38.

Sec. 6384. Values, how affixed. 100. In making out this list, the assessor shall place opposite to each tract of land or lot listed the value without improvements, and also, in another column opposite, the value of the improvements erected thereon or affixed thereto. (116.)

Sec. 6385. Assessor's return-book. 101. Each assessor shall, in a book to be furnished by the county auditor, on or before the first Monday in June in each year, make out, and deliver to such auditor, a return of the real estate listed for taxation in his township; which return shall contain—

First. The names, arranged in alphabetical order, of the persons in whose names the real estate of the township (except such as lies within the limits of any city, town, or village) has been listed; and, in appropriate columns opposite each name, the description of

each parcel of real estate listed in such name, and the value of such separate parcel, as determined by the assessor from actual view.

Second. The names, arranged in alphabetical order, of the persons in whose names the real estate in each city, town, or village, respectively, in such township has been listed; and, in appropriate columns, opposite each name, the description of each parcel of real estate listed in such name, and the value of each separate parcel, as determined by the assessor from actual view.

In cases where the name of the owner of any parcel of real estate is unkown, it shall be so returned. Each parcel of real estate shall be described according to the congressional or other survey, division, or subdivision, or according to the recorded plat or subdivision thereof; and also in cases of parts of town lots, by the number of feet along the principal street or streets upon which it abuts. And any description may be supplemented by reference to any public record of the county. (117.)

Sec. 6386. Assessor's oath. 102. Each assessor or deputy assessor shall take and subscribe an oath, which shall be certified by the county auditor or other officer administering the same, and attached to the return which he is required to make to the county auditor, in the following form:

I, —— ——, assessor for the township of ———, ——— county, in the State of Indiana, do solemnly swear that the return to which this is attached contains a correct description of each parcel of real property within said township, as far as I have been able to ascertain the same, that the value attached to each parcel in said return is, as I verily believe, the full and true cash value thereof, estimated agreeably to the rules prescribed by the law particularly section 53 [6336] *of the act concerning taxation; that in no case have I knowingly omitted to demand a statement of the description and value of all the real estate which I am required by law to list, or in any way connived at any violation or evasion of any of the requirements of the law in relation to the listing and valuing of real estate, subject to all the penalties hereinafter prescribed in section* 255 [6521*b*] *of this act.*

Which return shall be kept at the office of the county auditor, for the inspection of any owner of property contained in such return. (118.)

Sec. 6387. Memorandum to owner. 103. Before or at the time of making such return, the assessor shall leave with the owner or owners, or his, her, or their agent, if residing in the county, at his, her, or their place of residence, a memorandum containing a description and value of each tract, lot, or parcel of land, containing the amount of [at] which his, her, or their real estate has been assessed, respectively, and of the time when the board of review for the county will meet for the purpose of hearing and determining grievances and to equalize taxes within the same. (119.)

Sec. 6388. Quadrennial assessments. 104. The first assessment of the real estate made in pursuance of the provisions of this act shall

be made in the year 1891, and a like assessment shall be made every four years thereafter; and the personal property shall be assessed at the same time such real property is assessed, and by the same person or persons. And each assessor may, when taking lists of personal property, correct all errors of assessment of real estate which he may discover on the books, either in the name of the person to whom the property is assessed, by change of ownership or otherwise, or in the description of property. The assessor shall annually thereafter also assess any real estate, or improvement, found omitted and also note and list all changes found in improvements on real estate, and make return thereof to the county auditor as in the year in which real estate is to be assessed. (120.)

Sec. 6389. Tabular list to auditor—Contents. 105. Each assessor shall, on or before the first Monday of June annually, make out and deliver to the auditor of his county, in tabular form and alphabetical order, a list or lists of the names of the several persons, companies, or corporations in whose names any personal property, moneys, credits, or other taxables shall have been listed, on which list or lists he shall enter separately, in appropriate columns, opposite each name, the aggregate value of the several species of personal property and taxables required to be listed, as attested by the person required to list the same or as determined by the assessor, making separate lists of persons residing out of any incorporated city or town and of any persons who are residents of an incorporated city or town. The columns shall be accurately added up. To such return shall be attached the following oath or affirmation, to be made by himself or his deputy, and certified by the county auditor or other officer administering the same:

I, ——— ———, assessor for ——— township, ——— county, in the State of Indiana, do solemnly swear [or affirm], *that the value of all personal property, moneys, credits, and other assessables, of which a statement has been made and attested by oath or affirmation of the person required by law to list the same, is truly returned as set forth in such statement; that in every case where, by law, I have been required to ascertain the amount and value of personal property and assessables of any person, company, or corporation, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of such personal property and assessables, and that, as I verily believe, the full value thereof, so ascertained by me, and estimated by the rule prescribed by law, particularly section* 53 [6336] *of the act concerning taxation, is set forth in the annexed return; that in no case have I knowingly omitted to demand a statement of the description and value of personal property, or of the amount of moneys and credits, or of the amount and value of other stocks, bonds, or other assessables which any person is required by law to list, nor have I, in any way, connived at any violation or evasion of any of the requirements of law in relation to listing or valuing personal property, moneys, credits, stocks, or other assessables for taxation.* (121.)

Sec. 6390. Correction of errors. 106. When the returns of the assessors are received, the county auditor, if satisfied that any assessor has omitted any personal property, moneys, rights, credits, effects, stock, or real estate in his township which it was his duty

to return, may, if he deems it expedient, authorize and require such assessor to proceed to correct any error or omission which may have occurred as aforesaid; and in such case, such assessor shall, within ten days after being so required and authorized, proceed to correct such errors and omissions, and make such returns thereof to such county auditor; but nothing herein contained shall authorize any assessor to reduce the amount assessed against any person in his former return. Or the auditor may himself ascertain the value, and add the same to the assessment; and such county auditor shall charge such person with the additional amount, if any, returned by such assessor. (122.)

Omitted property assessed by auditor, § 6416; by treasurer, § 6456; by assessor, § 6393; by board of review, § 6397.

Sec. 6392. City and town plats. 107. Before any addition is made to any city or town, the person making the same, before such plat is recorded, shall present the same to the county auditor, who shall assess and apportion the true valuation of each lot or parcel of land described in such plat, in the same manner as other lots are valued, and thereupon such lots or parcels shall be entered on the tax list in lieu of the land included therein; but in making such valuation, regard shall be had to the next preceding valuation of the real estate, so that the said lots shall, as near as practicable, be equalized with adjacent lands and lots according to such valuation. (124.)

See § 3374 (towns), and § 3194*a*.

Sec. 6393. Omitted property—Assessor's duty. 108. Whenever any assessor, prior to the filing of his return with the county auditor, shall discover or receive credible information, or have reason to believe, that any real or personal property has been omitted in the assessment of any year or number of years from the listing and assessing or from the tax-duplicate; or that any person, company, or corporation has, from any cause, omitted to list any part of his, her, or their property, or has not returned the full value thereof; or that the tax for which such property was liable, from any cause, has not been paid; or that any real estate, by reason of defective description thereof, has failed to pay taxes for any year or number of years,—he shall proceed to correct his list, and add such property to the assessment, so that such property and the owner thereof may be charged with the proper amount of taxes thereon. But, before making such correction or addition, if the person claiming to own such property, or occupying it, or in possession thereof, resides in the county, he shall give the person claiming to own, or occupying or having in possession such property, notice in writing of his intention to list such property, describing it in general terms, and requiring such person to appear before him, at his office or place of business, at a specified time within ten days after giving such notice, to show cause, if any, why such property

should not be listed and placed on the assessment-book; and if the party so notified does not appear, or if he appear and fail to show any good and sufficient cause why such assessment should not be made, such listing shall be made, and the particular years for which such property should be listed shall be noted. Such assessor shall also file with the county auditor a statement, in writing, of his reasons for making such correction or assessment, and the facts or evidence upon which such reasons were based. The arrearages of tax which might have been assessed shall be charged against such person and property by the county auditor. The county assessor hereinafter provided for shall, at any time during any year, have the power and exercise the duties in this section prescribed for township assessors. (125.)

The county auditor may assess omitted property, § 6416; and so may the county treasurer, § 6456. Formerly the assessment could only be for the current year, and not for property omitted in past years; and such special assessment was required to be made and returned to the county treasurer before March 1, of the current year, 80 Ind. 195. See § 6390, *note*.

Sec. 6394. Irregularities not to vitiate. 109. A failure to complete or return an assessment of property, real or personal, by the township assessor, within the time required by this act; or any informality or irregularity in making the assessment, or in the tax-lists, or errors of any kind therein,—shall not vitiate the same but the same shall be as legal and valid as if completed and returned in the time required by law; and such informalities or irregularities may be corrected at any time after such return is made. And if any property is listed or assessed on or after the first day of June, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time. But nothing in this section shall be so construed as to release such assessor from any penalty imposed upon him by law for his neglect or failure to make his return within the period prescribed by this act. (126.)

Sec. 6395. Assessor to return statements. 110. Each assessor shall, at the time he makes return of taxable property to the county auditor, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order corresponding with his list or lists, and also all the plats used in assessing real estate; and the auditor shall carefully preserve the same in his office. (127.)

Sec. 6396. Assessor failing to swear parties—Penalty. 111. If any assessor or deputy assessor shall fail or neglect to administer to any person, by him assessed, any oath required by this act to be administered, he shall forfeit and pay to the State of Indiana, for the use of the school fund, the sum of twenty dollars for each case of such omission and neglect, which may be recovered by an action in the name of the State of Indiana, on the relation of the

prosecuting attorney, before any justice of the peace of the county, together with the costs of such action. (128.)

Sufficiency of indictment for a failure to call on a person to assess him under the laws of 1841 and 1842, 8 B. 212.

SEC. 6396*a*. County assessor. 112. There shall be elected, on the first Tuesday after the first Monday of November, 1892, and every four years thereafter, in each county in this State, one county assessor, who shall possess the powers and perform the duties hereinafter specified: *Provided*, That no county assessor shall be eligible for re-election until four years after the expiration of the term for which he shall have been elected: *And, provided further*, That on the first Monday of June, 1891, or as soon thereafter as practicable, the board of county commissioners of each county in this State shall elect, by ballot, a county assessor to serve until the election and qualification of the county assessor, as provided by this act. Such county assessor shall be a resident freeholder and householder of the county not less than five years before the date of such election. Within ten days after his election, he shall give bond with at least two good and sufficient freehold sureties, to the acceptance of the county auditor, in the sum of five thousand dollars, payable to the State of Indiana, and conditioned for the faithful and impartial discharge of his duties according to law, and shall take and subscribe an oath or affirmation to be indorsed on his bond that he will faithfully, impartially and honestly discharge the duties of his office to the best of his skill and ability, which oath shall be in the form, as near as may be, of the oath of office of township assessors, as set out in section ninety of this act. Said bond so indorsed shall be deposited with the county auditor, who is also empowered to administer said oath. The board of county commissioners shall fill any vacancy in said office at any regular or special session. Said county assessor shall receive three dollars per day for the time actually employed in the duties of his office, to be paid out of the county treasury on order of the board of county commissioners. Before such allowance is made said county assessor shall file with the board of county commissioners an itemized statement, duly verified, showing the time actually employed by him and the nature of his services.

SEC. 6396*b*. Duties of county assessor. 113. As soon as such county assessor has qualified, he shall receive from the county auditor all returns of real and personal property made by the assessors of the several townships of the county, together with all assessment lists, schedules, statements, maps, and other books and papers filed with the auditor by said township assessors. It shall be the duty of such county assessor to make a careful examination of the tax duplicate of the county, and also of all other records and papers in the offices of the county auditor, treasurer, recorder, clerk, sheriff and surveyor, and to list and assess, at its true cash

value, upon the proper township assessor's books and to the proper persons, all omitted assessable property, of every kind and nature whatsoever, including tax certificates, mortgages, debts, judgments, claims and allowances of courts and legacies and property in the hands of administrators, executors, guardians, assignees, receivers, trustees, and other fiduciaries. The valuation made on any omitted property by the county assessor shall be entered in a separate column under the head of "Valuation by county assessor" immediately after the column containing the valuation by the township assessor in the several lists and returns of said township assessors. The county assessor shall have all the rights and powers given by law to township assessors for the examination of persons and property, and the discovery and assessment of property, and making lists and returns of the same. He shall, on or before the first Monday after the 4th day of July in each year, make returns to the county auditor of all township assessors' books, returns, lists, schedules, maps, and other papers received by him from the auditor, together with such additional lists, assessments, books and papers as he has made thereto; and all assessments so made by the county assessor shall have the same force and effect as if made in the first instance by the township assessor. It shall also be the duty of the county assessor, at any time during the year, to list and assess upon the proper assessor's books in the office of the county auditor any omitted property that he may discover and which should be assessed; and the same shall be placed upon the duplicate by the auditor, and the taxes thereon extended and collected as in other cases. The county assessor is hereby authorized and required to advise and instruct all township assessors of his county as to their duties under the law, and for this purpose he shall visit each township assessor during the months of April or May in each year. The county assessor is also given all the powers hereinafter given to county auditors and treasurers as to assessment of omitted property after the meeting and adjournment of the board of county review in each year, and all provisions of sections 142 and 182 of this act, as to notice or otherwise, so far as applicable, shall apply to such assessment by the county assessor as if the same were made by the county auditor or the county treasurer. On order of the county commissioners, duly entered of record at any regular or special meeting of the board, the county assessor may appoint one or more deputies to serve such time, not exceeding thirty days in any one year, as the commissioners shall direct, who shall have the same qualifications, possess the same powers and perform the same duties as the assessor, subject to his control and direction. They shall receive such compensation as the county commissioners shall fix, not to exceed two dollars per day.

ARTICLE 14—COUNTY BOARD OF REVIEW.

SEC.
6397. How organized—Powers.
6399. Duties and powers.
6401. Auditor must keep record.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6397. How organized—Powers—Oath—Duties. 114. There shall be an annual board for the review of all assessments and the equalization of the valuation of real and personal property in each county. Such board shall be composed of the county assessor, county auditor and county treasurer. The county assessor shall be president and the county auditor secretary of said board, which shall be known as the "county board of review." The board shall meet for assessment, review and equalization of taxes at the room of the county commissioners in the court-house of each county, on the first Monday after the fourth day of July annually. Two weeks' previous notice of the time, place and purpose of such meeting shall be given by the county auditor in some newspaper of general circulation, printed and published in the county; or if no newspaper be published in the county then by posting up notices in three public places in each township in the county. Such board shall have the power to hear complaints of any owner of personal property, except "railroad track" and "rolling stock" of railroads, to equalize the valuation of property and taxables made subsequent to the preceding first day of April, and to correct any list of valuation as they deem proper. It shall also have power to equalize the valuation made by the assessors, either by adding to or deducting therefrom such sums as are necessary to fix the assessment at the true cash value. In all cases where the county board deems it necessary to add omitted property, or to increase the valuation thereof by the assessor, it shall cause the names of the persons to whose lists property is to be added, or the valuation of whose property is to be increased, to be inserted in the notice hereinbefore provided for; or such board may, at its option, cause to be served upon the person to whose list property is to be added, or the valuation of whose property is to be increased, a written notice that it is proposed to revise or correct his list, but such notice need not specify the particulars in which it is proposed to revise or correct the list or returns, nor shall it be necessary to specify particularly in the published notice, but it shall be sufficient in any or all such notices to state generally that it is proposed to correct or revise the returns, list, statement or schedule of the person or persons named. In case such county assessor neglects to give the written notice herein provided for, it shall be issued by the auditor to the sheriff of the county, who shall serve the same at least three days before the same comes up for hearing. In case the board adjudges that the returns, statement or schedule list shall be revised or corrected by adding property thereto, or by

increasing the valuation of any property therein described, the taxpayer whose list, return, statement or schedule it adjudges, shall be revised or corrected as aforesaid, shall be liable for all costs occasioned by such revision or correction. The board shall correct all errors in the names of persons in the descriptions of property upon said list, and in the assessment and valuation of property thereon, and shall cause to be done whatever else may be necessary to make said lists and returns of assessments comply with the provisions of this act. It shall pass upon each valuation, and may, on sufficient cause being shown, or on its own motion, correct the assessment or valuation of any property in such manner as will, in its judgment, make the valuation thereof just and equal, and enter the valuation, when so changed by it, in a separate column. In all cases where a change has been made by it, or omitted property placed by it on the returns, two weeks' previous notice of the time, place, and purpose of the meeting of the board of review shall be given by the county assessor. A majority of said board shall constitute a quorum for the transaction of business, and may decide any question. Before entering upon their duties the members of the board of review shall each take and subscribe an oath for the faithful and impartial discharge of their duties as members of said board, which oath shall be administered by the auditor to the assessor and treasurer, and by the assessor to the auditor, and shall be filed with the auditor, and shall be in the form following:

STATE OF INDIANA, } ss.
. . . . . COUNTY. }

I, . . . , do solemnly swear that I will support the constitution of the United States and the constitution of the State of Indiana and that I will faithfully and impartially discharge my duty as a member of the board of review for said county; that I will, according to my best knowledge and judgment, assess, review, and equalize the assessment of all the property of said county, and that I will in no case assess any property at more or less than its true cash value, as such value is defined by section 53 of the act concerning taxation, so help me God.

. . . . . .

Subscribed and sworn to this . . . day of . . . , 18 . .

. . . . . .

At such meeting the county auditor shall submit to the board of review the assessment lists of the county as returned by the township assessors and added to and returned by the county assessor for the current year; and the board shall proceed to examine and review the same. In addition to his other duties it will be the duty of the county assessor to report to the board of review for the action of the board, all corrections and changes in the returns and assessments of the township assessors, which in the judgment of the county assessor ought to be made. The board of review will consider and act upon all recommendations made by

the county assessor and will also, of its own motion, or on sufficient cause being shown by any person, add to the assessment lists the names of persons, the value of personal property, and the description and value of real estate liable to assessment and omitted on said lists. The board shall correct all errors in the names of persons, in the descriptions of property upon said lists, and in the assessment and valuation of property thereon and shall cause to be done whatever else may be necessary to make said lists and returns of assessments comply with the provisions of this act. The board shall pass upon each valuation, and enter the valuation as fixed by it in a separate column. The lists as prepared by the assessors shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. The board may, on sufficient cause being shown, or on their own motion, correct the assessment or valuation of any property in such manner as will in their judgment make the valuation thereof just and equal. To that end the board may examine, on oath, any person touching the matter. Any member of said board may administer such oath. Said board is hereby given full power to send for persons and papers and to compel witnesses to answer under oath, touching any question concerning the assessment and valuation of property. The sheriff of the county shall serve all process and obey all orders of said board, and the board is given power to punish for contempt by fine not to exceed one hundred dollars and imprisonment in the county jail not exceeding ten days, all persons refusing to appear [and testify before the board.] [An appeal] shall lie to the circuit court of the county from all orders of the board inflicting such punishment, which appeals shall be governed by the laws providing for appeals in criminal cases from justices of the peace so far as applicable. Nothing, however, in this section shall be taken or construed to authorize the board to assess any property at more or less than its true cash value as the same is defined in section 53 of this act. Where it appears from the returns of the assessors, or from the corrections made in said return by the board that any property owner has *bona fide* indebtedness, the same shall be deducted from the amount of his credits listed in the county, and he shall be assessed only on the residue of his credits, which residue shall be fixed by the board of review.

Sec. 6399. Duties and powers. 115. It shall be the duty of such board, at such meeting, to inquire as to the valuation of the various classes of property in the respective townships and divisions of the county, and to make such changes, whether by way of increase or decrease in such valuation[s], as may be necessary to equalize the same as between the townships or divisions of townships, and to determine the rate per cent. to be added or deducted in order to make a just and equitable equalization. [In the year in which real estate is assessed, it shall be the further duty of the

board to make, in like manner, an equalization as to the value of the real property] in the respective townships and divisions, so as to conform, throughout the county, to a just and equitable standard, reference being had to the natural and artificial characteristics and surroundings and other elements of value. Such board shall also have power, in proper cases, to reduce or increase the valuation of any particular tract or lot. (130.)

Such board may consider lands, town lots, and city lots as separate classes, if necessary for the purpose of equalization, and determine a percent[age] of addition or reduction for such [each] or any of said classes within the respective townships as between the several townships or other divisions. The board shall have no power to reduce the aggregate valuation of all the townships below the true cash value, nor increase the same beyond the amount actually necessary for a proper and just equalization. If the board shall find the aggregate assessment is too high or too low, or is generally [so] unequal as to render it impracticable to equalize the same, it may set aside the assessment of the whole county, or of any township or townships therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of their respective townships in such amount as the board may deem right and just and consistent with law. The duration of the session of the board of review shall not exceed eighteen days. (131.)

SEC. 6401. Auditor must keep record. 116. The county auditor shall keep a full and accurate minutes of the proceedings of the board of review. (132.)

ARTICLE 15—STATE TAX COMMISSIONERS.

SEC.

6401*a*. State board of tax commissioners.
6401*b*. Bond and oath.
6401*c*. Terms of office.
6401*d*. Duties.
6401*e*. Record—Quorum.
6401*f*. Pay—Expense.
6401*g*. Examination of witnesses.
6401*h*. Penalties.
6401*i*. Appeals.
6401*j*. Duties of governor, auditor, and secretary limited.
6401*k*. Vacancy.
6401*l*. Office and printing.
6401*m*. Meetings—Powers—Duties—Oaths—Appeals—Costs.

SEC.

6401*n*. Oath of a member.
6404. Secretary's oath and duties.
6405. Quorum.
6406. Duty of board as to real estate.
6407. County auditor's abstracts to state auditor.
6408. Classification by board.
6409. Counties, how equalized.
6410. Railroad property, how assessed.
6411. Results, how tabulated.
6412. Equalization certified to state auditor.
6413. How tax extended.
6414. Report of board published.

[1891. Approved and in force March 6, 1891.]

SEC. 6401*a*. State board of tax commissioners. 117. Immediately upon the taking effect of this act, the governor shall appoint two skilled and competent persons, not more than one of whom shall be of the same political party, who, together with the secretary of state, auditor of state and governor, the last three of whom

shall *ex officio* be members, and the governor chairman thereof, shall constitute and be a board to be denominated the state board of tax commissioners, who shall perform the duties and have the powers hereinafter specified.

Sec. 6401*b*. Bond and oath. 118. The governor shall commission the commissioners so appointed as aforesaid, and before entering upon the discharge of their official duties they shall each execute a bond payable to the State of Indiana, in the penal sum of $10,000 (ten thousand dollars,) with sureties to the approval of the governor, for the faithful discharge of their official duties, and they shall each take and subscribe an oath of office, as hereinafter set out, which oath shall be indorsed upon their official bond, which bond and oath, when so executed, shall be filed in the office of the secretary of state.

Sec. 6401*c*. Terms of office. 119. The members of the first board shall hold their offices, one for two years and one for four years, the said members to determine by lot, after they are chosen, in any manner they may agree upon, which one shall hold his office for two years and which one for four years, respectively. And thereafter persons so chosen as members of such board shall hold their office for a term of four years.

1. The assessor may assess *omitted property*, §§ 6390, 6393; and so may the auditor, § 6416, and the treasurer, § 6456.

2. There is no city board of equalization, §§ 3157, 3160, 6521*a*. The town has none, for it adopts the assessment as equalized by the county board of equalization.

3. A town or city can not levy taxes until after the county board of review has met; for they now adopt the appraisement of the State, §§ 3160 and 6521*a*; 104 Ind. 363.

4. A county board of review has the power, and it is one of its duties, to add and assess *omitted* property, and to investigate and determine whether a citizen is the owner of property, subject to taxation, which he has omitted from his tax list. To that end it may examine witnesses, each member having power to administer all necessary oaths in the discharge of the duties of the board, and a prosecution for perjury may be predicated upon testimony given in such cases, 110 Ind. 82.

5. An *indictment*, charging perjury in testimony given before a county board of equalization by a tax-payer concerning personal property owned by him on the first day of April, must show either that the defendant was a resident of the county on that day, or that, having become a resident subsequently, he had not been assessed on the property in question in the taxing district from which he had moved, in order that it may appear that his testimony was concerning a material matter, 110 Ind. 82; 108 Ind. 353.

6. This section, as stood in the law of 1881, was held *unconstitutional*, so far as it allowed the value of property assessed to be increased, or omitted property to be added; because no sufficient *notice* was provided for, a general notice of the time and place of the sitting of the board being insufficient. This defect was remedied by the amended section of 1889, and by the new tax law of 1891, 117 Ind. 1; 118 Ind. 214.

7. The *valuation* placed upon lands by the assessor and board of review is *conclusive* upon the county auditor, and he can not add thereto; and if he does, and the tax-payer pays the tax assessed upon such additional valuation, he may recover back such tax, 117 Ind. 410. Where it was claimed that the

board illegally *increased* the value fixed to a sworn schedule, in an action to restrain the collection of taxes, it was held that it must be averred that the assessment, as increased, was in fact too large, 29 Ind. 533.

Sec. 6401*d*. Duties. 120. It shall be the duty of the state board of tax commissioners:

First. To prescribe all forms of books and blanks used in the assessment and collection of taxes, and to change such forms when prescribed by law, in case any such change shall be necessary.

Second. To construe the tax and revenue laws of the State and instruct them in relation to their duties with reference to taxation and assessments, whenever requested so to do by any officer acting under any such laws, or by any other person interested therein.

Third. To see that all assessments of property in this State are made according to law.

Fourth. Especially to see that all the railroads and other corporations of the State are assessed and taxed as provided by law.

Fifth. To see that all taxes due the State are collected.

Sixth. To enforce penalties prescribed by any revenue law of the State for disobedience of its provisions.

Seventh. To determine, whenever necessary, the amount required to be levied upon property in the several counties to cover any deficiency in the state revenue, not otherwise provided for.

Eighth. To examine all books, papers and accounts, and to interrogate under oath, or otherwise, all persons necessary to enable the board to acquire and obtain all information that could in any manner aid it in securing a compliance with the tax and revenue laws of the State by all persons or corporations liable to taxation, or to pay any license fee under any law in force in this State.

Ninth. To make such rules and regulations as the board shall deem proper to effectually carry out the purposes for which the board is constituted, and to make all necessary rules and regulations not inconsistent with law, as the board may deem necessary with respect to its own meetings and procedure.

Tenth. To report to the general assembly, at each session, the whole amount of revenue collected in the State for all purposes, classifying as to state, county, township, and municipal purposes, with the sources thereof, the amount lost and the causes of the loss, the proceedings of the board, and such other matters of information concerning the public revenues, as they may deem of public interest.

Eleventh. To make diligent investigation and inquiry concerning the revenue laws and systems of other States and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the general assembly at each session thereof, such amendments,

changes or modifications of our revenue laws as seem proper or necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public revenues.

Twelfth. To see that each county in the State be visited by at least one member of the board, as often as once each year, to the end that complaints concerning the law may be heard, and that information concerning its workings may be collected. That all revenue officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

Sec. 6401*e*. Record—Quorum. 121. A record of the proceedings of such board shall be kept at the capital, open to the inspection of the public. A majority of such board shall constitute a quorum to do business.

Sec. 6401*f*. Pay—Expenses. 122. The members of said board, except the secretary, auditor and governor, shall each receive as compensation for his services the sum of twenty hundred dollars a year, payable quarterly out of appropriations to be made for that purpose. They shall also receive traveling expenses actually paid, necessary to the performance of the duties of the office, which expenses shall be itemized by the person incurring the same, and when the account of the same is approved by the governor, it shall be paid, not exceeding six hundred dollars per annum each, and not otherwise.

Sec. 6401*g*. Examination of witnesses. 123. The said board, or any member thereof, shall have power to subpœna and examine witnesses, to administer oaths, and shall have access to and the power to order the production of any books or papers in the hands of any person, company or corporation whenever necessary in the prosecution of any inquiries necessary or proper in their official capacity.

Sec. 6401*h*. Witnesses, penalties. 124. Any person who shall disobey any subpœna, or subpœna *duces tecum* of said board or any member thereof, or refuse to testify, when requested so to do by said board or any member thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than $50, nor more than $1.000 for each offense.

Sec. 6401*i*. Appeals. 125. Appeals shall lie from the decision of any county board of review to the state board of tax commissioners, which shall hear and determine the same, in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor: *Provided*, That all such appeals shall be allowed within such time and under such restrictions as may be prescribed by the state board of tax commissioners; but the pendency of such appeals shall not operate to stay the collec-

tion of any tax, except by special order of the board and upon such conditions as it may prescribe.

Sec. 6401*j*. Duties of governor, auditor, and secretary limited. 126. The duties imposed by this act, as specifically set out in section 120, so far as the same can be consistently done, shall be done and performed by the two members of the board specially chosen to act as such, and the governor, auditor and secretary of state shall only be required to sit with the board and take part in its proceedings when performing the duties heretofore devolving upon the state board of equalization, and at such other times and under such other circumstances as may be rendered necessary in order to effectually carry out the purposes of this act.

Sec. 6401*k*. Vacancy. 127. In case a vacancy shall occur by reason of the death, resignation, or removal of either of the commissioners specially chosen to act as such, the governor shall appoint a successor to fill out the unexpired term of the officer whose office is thus made vacant. And in such appointment the governor shall appoint a person from the same political party as the officer whose office is thus made vacant.

Sec. 6401*l*. Office and printing. 128. It shall be the duty of the custodian of public buildings and property to furnish a suitable room in the capitol building, and the auditor of state shall provide all such printing and stationery, as may be necessary for the transaction of the business of said board.

Sec. 6401*m*. Meetings—Powers—Duties—Oaths—Appeals—Costs. 129. The state board of tax commissioners shall, annually, convene in the office of the auditor of state, on the first Monday of August each year, for the purpose of assessing railroad property and equalizing the assessment of real estate as provided in this act. Said board shall organize with the governor as chairman, and the deputy auditor of state, or one of the clerks in the office of the auditor of state, shall act as secretary. The state board of tax commissioners is hereby given all the powers given to county boards of review. They shall not be bound by any reports or estimates of value of railroad property, real estate or other property, as returned to the county auditors or to the auditor of state, but shall appraise and assess all property at its true cash value, as defined by this act, according to their best knowledge and judgment, and so as to equalize the assessment of property throughout the State; they shall have the power to send for persons, books and papers, to examine records, hear and question witnesses, to punish for contempt any one who refuses to appear and answer questions, by fine not exceeding one thousand dollars and by imprisonment in the county jail of any county not exceeding thirty days, or by both. Appeals shall lie to the criminal court of Marion county from all orders of the board inflicting such punishment,

which appeals shall be governed by the laws providing for appeals in criminal cases from justices of the peace, so far as applicable. The sheriffs of the several counties of the state shall serve all process and execute all orders of the board. All members of the board may administer any oath. All necessary costs and expenses of said board shall be paid out of the state treasury on warrants of the auditor on being duly certified.

The state board of equalization of 1869 was declared illegal; but it was held that taxes illegally collected by reason of its action could not be recovered back from the state when paid into the state treasury, 36 Ind. 175; 49 Ind. 64.

Sec. 6401*n*. Oath of a member. 130. The several persons constituting the board, as herein provided, before entering upon the discharge of their duties as members of said board, shall each take and subscribe an oath for the faithful and impartial discharge of their duties as members of such board, which oath, together with the oath of the secretary, shall be filed and preserved with the proceedings of the board. Which oath shall be in the form following, to wit:

STATE OF INDIANA, } ss:
MARION COUNTY, }

I, . . . , do solemnly swear that I will support the constitution of the United States and the constitution of the State of Indiana; that I will faithfully and impartially discharge my duties as a member of the state board of tax commissioners, that I will, according to my best knowledge and judgment, assess and equalize the property of the several counties of this State, and that I will in no case assess any property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help me God.

. . . . . .

Subscribed and sworn to this . . . day of . . . , 189 . .

. . . . . .

Sec. 6404. Secretary's oath and duties. 131. The secretary shall take and subscribe an oath for the faithful performance of his duties as said secretary; and shall keep a record of the proceedings of the board; which shall be certified by the chairman and secretary, and filed in the office of the auditor of state. (135.)

Sec. 6405. Quorum. 132. Any three members of said board shall constitute a quorum for the transaction of business; and the board may adjourn from time to time until the business before it is finally disposed of, but the duration of the session shall not exceed forty days. (136.)

If the board remain in session longer than forty days, the acts done after the expiration of that period are void, 34 Ind. 452; 49 Ind. 64.

Sec. 6406. Duty of board as to real estate. 133. It shall be the duty of said board to examine the abstracts of all the real prop-

erty assessed for taxation in the several counties of this State, as returned to the auditor of state, and [it] shall equalize the assessments as hereinafter provided. But said board shall not reduce the aggregate assessed valuation in the State; neither shall it increase said aggregate valuation beyond the true cash value, as defined in this act. (137.)

The state board has no power except such as is conferred by statute, 3 Ind. 452. The courts can not control, reduce or enlarge the amount of the assessment as fixed by the board, 45 Ind. 85.

Sec. 6407. County auditors' abstracts to state auditor. 134. For the purpose of properly equalizing the valuations of real property and railroad property within the State, it shall be the duty of county auditors, on or before the 20th day of July of each year, upon the receipt of the assessment-books, to make out, and transmit to the auditor of state, an abstract of the assessment of property, showing the number, value, and average value of each class or kind of enumerated property as shown by the assessment, the value of each item of unenumerated property, and total value of personal property; the value of all land in each civil township without improvements, [the value of improvements] thereon, and the value of such land with improvements; and in like order all city or town in-lots and out-lots, showing the value of such lots, without improvements, the value of improvements [thereon], and the value of such lots with improvements; [and] the length of the main track or tracks, the length of the side track or tracks, the number or descriptions, [and] the value and average values of each separate item of railroad property. Such abstract shall be arranged in such manner as to show, by civil townships, the number of acres, value, and average value of improved lands, and, in like manner, the number of acres, value, and average value of unimproved lands, the total number of acres, [and] the total value, and average value per acre of all lands, the number, value, and average value of improved town or city lots, the number, value, and average value of unimproved town or city lots; the total number of lots, total value, and average value of all lots; and the total value of all property, real and personal. Said abstract shall be made out on the blanks, which it shall be the duty of the auditor of state to furnish the county auditor[s] for that purpose. The value to be given in said abstract shall be the assessed valuation, except in the case of railroad property, denominated "railroad track" and " rolling-stock," the value of which shall be given as returned by the railroad company [companies] to the county auditors. The county auditor[s] shall, at the same time, and accompanying the said abstract[s], furnish a detailed statement of the railroad property, denominated "railroad track" and "rolling-stock," reported by each road located in or through their counties. If there are any roads so located that have not made their report[s], as required by this act, the county

auditors shall report the facts, giving the names of such railroad[s.] In case of the failure on the part of any county auditor to furnish the proper returns of the assessment of his county to the auditor of state prior to or during the meeting of the state board of tax commissioners in each year, said board may, by order, authorize the auditor of state to equalize the assessment of such county when full returns have been received by him. (138.)

Sec. 6408. Classification by board. 135. Said board, in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, namely, railroad property, lands, and town and city lots; and, upon such consideration, determine such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property, in each county, or to or from the aggregate assessed value of each of said classes in the State, as may be deemed by the board to be equitable and just—such rates being in all cases even, and not fractional; and such rates, as finally determined by said board, shall not be combined. (139.)

Sec. 6409. Counties, how equalized. 136. Counties shall be equalized, by adding to the aggregate value of the lands [and] town and city lots, in every county in which said board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too high, such per centum as will reduce the same to its proper value as defined in this act. (140.)

The board is the final arbiter on the question of assessment, if it is properly constituted and legally organized, and acts without fraud, 45 Ind. 85.

Sec. 6410. Railroad property, how assessed. 137. Said board shall also assess the railroad property denominated in this act as "railroad track" and "rolling-stock," at its true cash value. And said board is hereby given the power and authority, by committee or otherwise, to examine persons or papers. The amounts so determined and assessed shall be certified by the auditor of state to the county auditors of the proper counties. The county auditor shall, in like manner, distribute the values so certified to him by the auditor of state to the several townships, cities, and towns in his county [which are] entitled to a proportionate value of such railroad track and rolling-stock, and said auditor shall compute and extend taxes against such value the same as against other property in such townships, cities, and towns. (141.)

The state board of tax commissioners has exclusive authority to assess and value the "railroad track" and "rolling-stock," 108 Ind. 144.

Sec. 6411. Results, how tabulated. 138. When said board shall have separately considered the several classes of property as here-

inbefore required, the result shall be combined into one table; and the same shall be examined, compared, and perfected in such manner as said board shall deem best to accomplish a just equalization of assessments throughout the State, preserving, however, the principle of separate rates for each class of property. (142.)

SEC. 6412. Equalization certified to state auditor. 139. When said board shall have completed its assessments and its equalization of assessments, for any year, it shall certify to the auditor of state the rates finally determined by said board to be added [to] or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said board; and it shall be the duty of said auditor, under his seal of office, to report the action of the board to the several county auditors immediately after the adjournment of said board. (143.)

SEC. 6413. How tax extended. 140. All rates for taxes provided for by law shall be computed and extended by each county auditor on the assessor's valuation of property, as equalized by the county board of review and state board of tax commissioners, except as otherwise provided by law. (144.)

SEC. 6414. Report of board published. 141. A report of all the proceedings of said state board of tax commissioners shall be published annually, in pamphlet form, and three thousand copies thereof printed; of which number the auditor of state shall retain two hundred copies, and the remainder shall be distributed, by him, to the several counties, in the proportion usual in similar cases. (145.)

ARTICLE 16—DUTIES OF COUNTY AUDITOR.

SEC.
6416. May assess omitted property—Notice.
6417. Making tax duplicate.
6418. Estimating and affixing values.
6419. Installments, how arranged.
6420. Adding and apportioning rates.
6421. Correcting errors.
6422. Duplicate to treasurer—Abstract to state auditor.
6423. Transfer-book—Indorsements—Fee.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6416. May assess omitted property—Notice. 142. Whenever the county auditor shall discover or receive credible information, or if he shall have reason to believe, that any real or personal property has, from any cause, been omitted in whole or in part, in the assessment of any year or number of years, from the assessment book or from the tax duplicate, he shall proceed to correct the tax duplicate, and add such property thereto, with the proper valuation, and charge such property and the owner thereof, with the proper amount of taxes thereon, to enable him to do which he is invested with all the powers of assessors under this act. But before making such correction or addition, if the person claiming to

own such property, or occupying it, or in possession thereof, resides in the county and is not present, he shall give such person notice, in writing, of his intention to add such property to the tax duplicate, describing it in general terms, and requiring such person to appear before him, at his office at a specified time within five days after giving such notice, and to show cause, if any, why such property should not be added to the tax duplicate and if the party so notified does not appear, or if he appears, and fails to show any good and sufficient cause why such assessment shall not be made, the same shall be made. And the county auditor shall, in all cases, file in his office, a statement of the facts or evidence on which he made such correction, but he shall in no case reduce the amount returned by the assessor, without the written assent of the auditor of state, given on the statement of facts submitted by the county auditor. (147.)

1. The county and township assessor (§ 6393) and county treasurer (§ 6456) may assess omitted property in certain contingencies. Taxes can be imposed and collected only in the way provided by statute, and an express promise to pay taxes on property which has escaped taxation, which taxes have never been placed on the tax duplicate, is void. Employing persons to look up omitted property is illegal; and a note given to them for the payment of taxes that should have been assessed on omitted property is void, 87 Ind. 405.

2. The city clerk possesses the powers of the auditor to assess omitted property, §§ 3070, 3160.

3. The law does not require the auditor, in making the assessment, to make it *upon* actual *view*, 27 Ind. p. 293. He can not assess omitted *railroad* property, 69 Ind. 71. Under the law of 1872 the assessment could not be for *past years;* only for property omitted for the current year, 78 Ind. 353; 80 Ind. 195, 330; 84 Ind. 108; and an attempt to collect past taxes thus assessed was enjoined, 84 Ind. 108; 88 Ind. 304. A sale of land for such taxes is void, 108 Ind. 97. Nor is this section retroactive, 103 Ind. 17; but it makes it his duty to search for such property, and in so doing he has all the powers of a township assessor. He does not act as a judicial officer, and his acts are not judgments, 106 Ind. 345; 84 Ind. 108.

4. What was essential to recover such taxes back, see 100 Ind. 570.

5. The county auditor can neither *add* to nor *reduce* the *valuation* of the property returned by the assessor; his power extends only to property wholly omitted from the assessor's list, 80 Ind. 330. The same is true of the city treasurer, 30 Ind. 133.

6. The county auditor is not entitled to additional compensation for his services under this section, 106 Ind. 345.

7. The county commissioners can not employ the county auditor to search for omitted property, nor any official, nor any person; and a contract to pay for such work is void, 106 Ind. 345; nor can the board authorize the auditor to employ an attorney to assist in the collection, 88 Ind. 133; 87 Ind. 405. See *note* 1. Neither can a city common council employ an agent or pay the city treasurer extra for such services, 88 Ind. 62.

Sec. 6417. Making tax duplicate. 143. The auditor of each county shall, between the first Monday in July and the last day of December, make out a duplicate list of taxes assessed in said county, according to the forms which shall be furnished by the auditor of state; and in so doing, he shall enter, in separate columns—

First. All lands in each civil township, with the names of the owners in alphabetical order, the value of the land without im-

provements, and, opposite to this, the value of improvements thereon.

Secondly. In like order he shall enter all city and town in-lots and out-lots situated in such township, with the improvements thereon.

Thirdly. In its place, all corporation stocks except stocks in banks, which shall be assessed and taxed in the town or city where the bank is located, as in this act elsewhere provided.

Fourthly. All other personal property subject to taxation, and which shall be charged, together with the poll-tax, in the civil township where the owner resides; but, when personal property is required to be listed in a township different from that of the owner's residence, it shall be taxed in the township where listed.

Fifthly. He shall number each original township in regular progression as the same shall stand entered on his duplicate, and the same township shall retain the same number from year to year.

Sixthly. He shall number each name in each township in regular progression.

The county auditor, in making out such duplicate, shall be careful to enter thereon all the lands previously entered for taxation, with the valuations thereof, as heretofore assessed, and all such lands as, by mistake or neglect or for any other cause, shall have been omitted to be entered; also, all such lands as shall be found to have become subject to taxation since the last assessment, with such valuation[s] as shall be affixed thereto by the assessor. And he shall enter all personal property according to the list of the last assessment made in conformity to this act, giving a pertinent description of all property thus entered on his duplicate, and duly enter all transfers of land made since the last assessment, and carry into effect all alterations which shall be made in the assessor's list by the board of review. (148.)

1. For city, see § 3070; town, § 3349. Under the law of 1835 the county auditor was entitled to ten cents per hundred words for making the tax duplicate, 18 Ind. 423.

2. How far a tax duplicate is evidence, see 96 Ind. 298, and § 6322, *notes;* as to assessment, see § 6330.

3. The presumption is that the taxes are placed on the tax duplicate by the proper person, 109 Ind. 10, in pursuance of a proper levy, 120 Ind. 528.

Sec. 6418. Estimating and affixing values. 144. The county auditor shall estimate in dollars and cents, rejecting fractions of a cent, and set down on such duplicate, in one column, the state, county, school, township, road, and all other taxes chargeable on the valuation of property contained in such duplicate, including also the poll-tax for state, county, and all other purposes; and he shall set down in a separate column the amount of taxes on all property returned delinquent, specifying the years and the amount remaining unpaid, with the proper penalty on the same added; and shall carry out the aggregate amount[s] into a column of totals. (149.)

City, § 3070; town, § 3349.

Sec. 6419. Installments, how arranged. 145. He shall set down the amount of taxes charged against each tax-payer in two separate columns, the first installment, embracing all road taxes and one-half of all other taxes, shall be placed in the first column; and the second installment, embracing the other half, shall be placed in the second column; with a sufficient blank space at the right of each column to write, in ink, the word "Paid"; and when payment of either half of such taxes shall be made, the treasurer shall write in the blank space opposite the same, the word "Paid," and shall execute a receipt therefor in the usual form now used, except that it shall state which installment the payment is entitled to apply to, and if for the last installment, shall state upon its face "in full." (150.)

City taxes are all collected in one installment, § 3160; unless the city by ordinance directs otherwise, § 3160*a*. Town taxes are collectible in two installments, § 3263.

Sec. 6420. Adding and apportioning rates. 146. He shall add on each page of such duplicate the several columns containing the valuation of real and personal estate, taxes, charges, and the number of acres, carrying the same forward from page to page, to the close of each township. And at the end of the duplicate, he shall recapitulate the several townships; and apportion the amount of taxes levied on the property in each township; and set down, in separate columns, the amount of state, county, school, township, road, and all other taxes levied; and add the aggregates of the above for the whole county. (151.)

City, § 3070; town, § 3349.

Sec. 6421. Correcting errors. 147. He shall, from time to time, correct all errors which he may discover in his duplicate, either in the name of the person charged with taxes, the description of the property, or the amount of the tax charged; and shall add, from time to time, any corrections or additional assessments made on the assessor's books by the county assessor; and when such correction is made after the duplicate shall have been delivered to the treasurer for collection, the auditor shall give a certificate of such correction to the treasurer, who shall make the like correction on his duplicate, and keep such certificate as his voucher on settlement with the auditor. (152.)

The city clerk may correct errors; and so may the town board of trustees, or the town clerk by their order.

Sec. 6422. Duplicate to treasurer—Abstract to state auditor. 148. He shall cause a copy of such duplicate to be delivered to the treasurer of his county, on or before the last day of December in each year. And he shall also make out, and cause to be transmitted to the auditor of state, on or before the first day of January in each year, a complete abstract of all the property listed in each township, the valuation thereof, the number of polls, the amount

of each kind of tax, and the aggregate thereof in the county, and certify the same, as also the rate of each kind of tax assessed. (153.)

1. The *omission to deliver* the duplicate to the treasurer before the statutory time, or to add up columns, or carry footings forward, are clerical errors merely, which do not vitiate, 27 Ind. 475.

2. The appropriate remedy to prevent the collection of illegal taxes, assessed and threatened, is by *injunction*, 22 Ind. 262.

3. A general levy can not be restrained because a part will be expended legally. The proper remedy is to restrain the treasurer from paying out the money, 27 Ind. 475.

4. Where *part* of the taxes assessed against a person are *illegal*, he can not restrain the collection unless he pays or *tenders* the portion legally assessed, 68 Ind. 500; 69 Ind. 153, § 6269, *note* 11. The complaint must allege that the duplicate is in the treasurer's hands, 25 Ind. 281; 59 *id.* 61; 86 Ind. 479; 70 Ind. 469; 73 Ind. 3; 72 Ind. 161; 43 Ind. 415.

5. If the duplicate is legal upon its face, the treasurer is justified in seizing the tax-payer's property for taxes due from him, 15 Ind. 26; 28 Ind. 154; 98 Ind. p. 235.

6. The tax duplicate is not a *written instrument* within the provisions of R. S. 1881, § 362, and a copy of it, in a proceeding to restrain the collection of taxes, need not be made a part of the complaint, 15 Ind. 26.

7. The *lien* for taxes does not attach to personal property until the duplicate is delivered to the treasurer It has the same effect upon property as an execution, 19 Ind. 146; 69 Ind. 153. See § 6427, *note* 2. The lien is perpetual until payment, and is not destroyed by the taxes being dropped from the duplicate for some intervening years, and placed for those years upon a "register of doubtful taxes," 109 Ind. 10; § 6446; 76 Ind. 68.

8. An *omission to deliver* the tax duplicate to the treasurer before the last day of December, or to *add up* the columns and carry the footings forward from page to page, or to recapitulate the townships at the end of the duplicate, or add up the aggregate of the items for the entire county, does not render the duplicate void, nor prohibit the collection of the taxes. Such omissions are merely clerical, and the auditor may supply them at any time, 27 Ind. 475.

9. The statute does not require the *duplicate* delivered to the treasurer to be *certified* as a copy. The one delivered to the treasurer is something more than a copy. It is as much an original instrument as the one retained by the auditor. It may be introduced in *evidence* as the original, 98 Ind. 231.

10. The duplicate should contain the property of all citizens residing in that *portion* of any part of the county *detached* and *added to another county*, if the assessment lists have been returned and the taxes levied before the disannexing order has been made, 32 Ind. 234.

11. The city duplicate, § 3070, and town assessment roll, § 3349, have the same effect as a county duplicate, being restricted in their effect to the city or town limits.

SEC. 6423. Transfer-book—Indorsements—Fee. 149. The county auditor shall keep a transfer-book, arranged by townships, cities, and towns, in which he shall enter a description, for the purpose[s] of taxation, of all lands that have been conveyed by deed or partition, with the date of the conveyance and names of the parties; and he shall indorse on such deed or instrument of conveyance the words, "Duly entered for taxation," or that it is "Not taxable," or "Has already been listed for taxation"; and for every such transfer he shall receive from the party recording such instrument, a fee of ten cents for each parcel of ground or lot so trans-

ferred. He shall take care that all descriptions for the purposes of taxation are correct, and that the owners' names are properly transcribed. Where the property is already in the name of the right owner, and needs no transfer, he shall not receive the fee of ten cents. (154.)

See § 6322*a*.

ARTICLE 17—DUTIES OF COUNTY TREASURER.

SEC.

6424. Notice to tax-payers.
6425. When to be at his office.
6426. When taxes shall be paid—Penalty.
6427. Demand of delinquents.
6428. When auditor shall not credit treasurer.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6424. Notice to tax-payers. 150. As soon as the county treasurer receives such duplicate, he shall forthwith cause notices to be posted up at the court-house door, and also cause the same to be published in one weekly newspaper having general circulation in his county, if any there be, for three weeks successively, stating in such notice, the amount of tax charged for state, county, school, road, or other purposes, on each one hundred dollars valuation of the taxable property; also the tax on each poll for state, county, or other purposes. (155.)

1. The requirement of notice is merely directory, and the failure to give it will not prevent the collection of the tax, 28 Ind. 154.

2. The *city* treasurer (§ 3087) and town marshal must give the notice provided for in this section.

3. Cities and towns under seventy thousand population may place their tax duplicates with the treasurer of their county, and require him to collect the taxes, § 3225*a*.

SEC. 6425. When to be at his office. 151. Such treasurer shall attend at his office at the seat of justice, in person or by deputy, for the purpose of collecting the taxes charged on said duplicate, until the third Monday of April next thereafter. (156.)

The county treasurer is required to keep open his office during business hours. He and his deputy are authorized to administer oaths necessary to the discharge of the duties of the office, R. S. 1881, § 5915.

SEC. 6426. When taxes shall be paid—Penalty. 152. Any person or tax-payer charged with taxes on the tax duplicate in the hands of a county treasurer may pay the full amount of such taxes on or before the third Monday in April, or may, at his option, pay the first installment on or before such third Monday, and the remaining installments on or before the first Monday of November following: *Provided, however,* That all road taxes charged shall be included in the first installment; *And, provided, further,* That in all cases where the first installment shall not be paid on or before the third Monday in April, the whole amount unpaid shall become due and be returned delinquent, and collected as provided by law;

and there shall be a penalty added of ten per cent. upon the amount of any installment not paid when due, which the persons or property assessed shall pay, together with cost of collection; and if such taxes remain delinquent at the succeeding first Monday in November, there shall be a penalty of six per centum added to all such taxes that become delinquent at the preceding April and November settlements, and a penalty of ten per centum only shall be added to the current delinquency occuring on the first Monday in November. (157.)

1. The law does not contemplate either *compound interest* or compound penalties, 27 Ind. 12.

2. The payment of taxes in an illegal and *void currency* is a nullity, and the treasurer may, notwithstanding such payment, proceed to collect them as in other cases; but he does not for that reason acquire any personal right of action against the person making such payment, for the recovery of the amount of taxes so attempted to be paid, 21 Ind. 74.

3. The fact that the tax-payer had property in the county out of which the taxes could have been made does not relieve him from the penalty. His duty is to pay the taxes to the treasurer, 27 Ind. 12; 68 Ind. 500.

4. The first installment must be paid in full to prevent the entire tax for the year becoming delinquent; and if the second is not paid by the first day of November the penalty will be added to such second installment, even though the first had been paid before the third Monday in April, 53 Ind. 196.

5. The *penalty* is a part of the tax; that assessed upon taxes levied for county purposes belongs to the county, and for state purposes to the State, 119 Ind. 473; 4 Kan. 114; 10 Kan. 318; 11 Nev. 300.

6. No *interest* can be charged on the taxes falling delinquent. The penalty is all that can be added to them.

7. Concerning cities and towns, see § 6419, *note*.

Sec. 6427. Demand of delinquents. 153. After the third Monday of April, the treasurer shall cause a list to be made of the delinquents, with the amount due from each, and with a separate column headed "Return," which list shall be certified to be correct by the county auditor. And he shall then proceed with such list, which, when so certified, shall be a sufficient authority, and have the same force and effect as an execution, to call, either in person or by deputy, upon every person named in the duplicate who is delinquent, and who resides in the county, and he shall make a demand for the amount of such delinquent taxes, and the penalty thereon, of each resident delinquent; and if the taxes and penalty are not paid on such demand, he shall proceed immediately to levy upon sufficient personal property of such delinquent to pay such taxes, penalty, and the costs of sale, and to sell the same in the manner and at the place hereinafter provided. In case such delinquent tax and penalty is paid upon demand, such treasurer shall charge and receive from such delinquent, in addition to the taxes and penalty, the sum of twenty-five cents, and where a levy is made, he shall charge and receive, in addition to his other costs, the sum of fifty cents for such demand. When he can find no personal property of such delinquent within the county upon which to levy, after diligent search therefor, he shall make, opposite the

name of said person on said list in the column marked "Return," a special return, setting forth the fact that he had made diligent search in the county for personal property of such delinquent, and was unable to find any upon which to levy for the payment of the taxes due thereon; which return shall be *prima facie* evidence of the facts therein recited; and the treasurer shall, if he have reason to believe that such delinquent have money, effects, or other property in his possession or on deposit that can be reached by any remedy known to the law, make known such facts to the prosecuting attorney who shall cause such proceedings to be brought as will secure the payment of such delinquency and for his services in so doing shall receive ten per cent. of such money so collected and a docket fee of ten dollars to be taxed as costs in such action and paid out of moneys so collected. (158.)

1. A tax duplicate legal upon its face is sufficient to *justify* the *treasurer* in seizing property for taxes, 28 Ind. 154. See § 6422, *note* 5. As to the authority of a city treasurer, see 30 Ind. 133.

2. The treasurer's *lien* is superior to an execution subsequently levied, 37 Ind. 203. See 19 Ind. 146, and § 6422, *note* 7, and § 6446, *note*.

3. A failure to make a demand does not relieve the tax-payer from the penalty, § 6426, *note* 3.

4. City, § 3087; town, § 3351.

Sec. 6428. When auditor shall not credit treasurer. 154. County auditors shall not be authorized to credit the treasurer with any uncollected delinquency for which he claims credit, unless such treasurer shall show, by proper returns as above provided, verified by his oath or affirmation, that he has diligently sought for and has been unable to find any personal property from which to collect such taxes, or that, having made a levy, he was enjoined or otherwise prevented from making sale or collection by a court of competent jurisdiction; and in all cases where he has failed to make demand upon residents who are delinquent, or to levy and sell when personal property can be found in the county out of which to make the tax, he shall be liable, on his official bond, for such uncollected delinquency and ten per cent. damages thereon. (159.)

ARTICLE 18—LEVY AND SALE OF PERSONALTY.

SEC.		SEC.	
6429.	Levy on chattels—Delivery-bond.	6432.	Manner of sale—Surplus.
6430.	Form of bond.	6433.	Treasurer may levy at any time.
6431.	Notice of sale.	6434.	Fees for levy and sale.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6429. Levy on chattels—Delivery-bond. 155. When he [the county treasurer] levies upon personal property, the delinquent may retain the possession of such personal property for sixty days, and until the day of sale, by giving such treasurer a joint and sev-

eral delivery-bond, payable to the State of Indiana, with good freehold surety, to be approved by such treasurer, in a penalty at least double the amount of the taxes and costs, conditioned that such personal property will be delivered at the door of the court-house of the county, or [at] such other place as the treasurer may designate, and at the time named therein, to be sold by such treasurer at public auction, or that such obligors will then and there pay such treasurer the amount of said delinquent taxes, penalty, and cost[s]. If such bond be not given he shall cause the property to be removed from the place the same is levied on, and to be stored in some secure place in his own name as treasurer. (160.)

1. A mere paper levy, without taking actual possession, or putting one in charge of the property levied upon, or taking a delivery bond for it, is void, and not such a possession by the treasurer as will sustain replevin against him, 98 Ind. 231.

2. Before levy the treasurer must make a *demand* for property, 14 Ind. 465.

3. An *assignment* of the property to trustees or an assignee under the statute, to pay debts, or even in bankruptcy, does not divest the lien of the State for taxes, 14 Ind. 465; 76 Ind. 68.

4. The *levy* may and should be *for all taxes* due from the defendant, in the county, whether on real or personal property, or for poll tax. The personal property of the tax-payer is the *primary fund* out of which all the taxes owed by him may be collected, 14 Ind. 465; 82 Ind. 393.

5. In a levy upon the personal property of a *corporation* for taxes owed by it, it can not deny its legal organization, nor any one else if it has ever acted as a corporation, 15, Ind. 26.

6. The duplicate is sufficient to authorize and justify the seizure of personal property, § 6422, *note* 5. In justifying the seizure it is not necessary to aver that each requirement of the statute had been complied with in the preparation of the duplicate; a general allegation that the duplicate had been delivered to the treasurer in conformity to law is sufficient; nor need it be averred that the seizure was by deputy, when such is the case. The absence of notice to the tax-payer, as provided by § 6224, is immaterial and not fatal to the levy, 28 Ind. 154. The duplicate is a sufficient defense; it is not necessary to show that the taxes were legally assessed, 109 Ind. 10; 39 Ind. 172; 15 Ind. 26.

7. The *city treasurer* has the same powers as the county treasurer, § 3070; 30 Ind. 133. So has the *town marshal* § 3351.

8. If one *purchase property* upon which there is a lien for taxes, whether delinquent or not, by such purchase he does not become *personally* liable for the taxes, although the property he has purchased is liable, and may be levied upon and sold, 68 Ind. 500; 69 Ind. 153.

9. The treasurer has power to *levy and sell at any time*, whether before or after the April settlement, whether the list provided for by § 6427 has been made or not, and whether the delinquent taxes are charged upon the *current duplicate* or not, 109 Ind. 10. See § 6433.

10. *Replevin* will not lie to recover possession of property taken for a tax assessment, even though the tax warrant has been issued contrary to law, 109 Ind. 10. The remedy of the injured person is trespass, or assumpsit, or probably, especially in case of insolvency of the officer, injunction. See 43 Ind. 415.

11. It may be shown that a *receipt* given for taxes was given by mistake, or that no money in fact was ever paid, 109 Ind. 10.

12. While money for taxes *voluntarily paid* can not be recovered back, money paid under a threat to levy, or after levy to secure a release, if paid under protest, can be recovered from the treasurer if the tax is illegal, 17 Ind. 326, 336.

13. City, § 3085; town, § 3351.

Sec. 6430. Form of bond. 156. Such bond may be substantially in the following form (the names, description, amount, and place of sale being changed to suit each particular case):

We, Richard Roe as principal, and Jonathan Jennings as surety, are jointly and severally bound unto the State of Indiana in the penal sum of fifty dollars, on the following condition:

Whereas, Peter Clark, as treasurer of Clark county, has this day levied upon one bay horse of the value of fifty dollars, to satisfy the taxes, penalty, and costs for the year 1890, due from the said Richard Roe: Now, if the said Richard Roe shall deliver said horse to said Clark, at ten o'clock A. M. *of the twentieth day of June, 1891, at the door of the court-house in Jeffersonville, to be sold to pay said taxes, penalty, and cost[s,] or will then and there pay to said Clark the full amount of said taxes, penalty, and cost[s,] then this bond shall be void; else, in full force.*

Witness our hands and seals, May 4, 1891.

RICHARD ROE. [SEAL.]
JONATHAN JENNINGS. [SEAL.]

Approved by me, May 4, 1891.

PETER CLARK, *Treasurer of Clark County.* (161.)

Although a restraining order prevents a demand and sale of the goods upon the day advertised, yet, when it is dissolved, a demand may be made, and, if not complied with, suit brought on the bond, 56 Ind. 554.

Sec. 6431. Notice of sale. 157. The treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the day of sale, by advertisement to be posted up in at least three public places in the township where such sale shall be made. (162.)

City, § 3089.

Sec. 6432. Manner of sale—Surplus. 158. Such sale shall be by public auction, at the court-house door or place designated by the treasurer; and no more property shall be sold than sufficient to pay the tax[es,] cost[s,] and charges. The treasurer, if he receives no bid to the amount of the tax[es,] penalty, and cost[s] due, may, in his discretion, if he thinks the property is ample surety [security] for the tax, purchase the same in behalf of the State of Indiana; and if the same is not redeemed within the period prescribed by law, he shall then re-expose the same for sale to the highest bidder for cash, after giving the same notice as is provided hereinbefore; and if there be any surplus after paying the tax[es,] penalty, and cost[s,] said surplus shall be returned to the owner of said property. (163.)

1. The owner's *personalty*, if within the jurisdiction, must be sold before the realty, 53 Ind. 196; 57 *id.* 276. As to *proof* that personal property could not be found, see 25 Ind. 134.

2. The purchaser assumes all risk, and if the sale proves invalid he has no remedy. A city, town, or county can not be the purchaser at its own sale; nor can it bind itself by an agreement to warrant the title of a purchaser at such sale, 84 Ind. 467; 10 Allen, 49; 34 Me. 266; 30 Md. 139. *City*, § 3090; *surplus*, § 3085.

Sec. 6433. Treasurer may levy at any time. 159. Nothing contained in the preceding section shall prevent the treasurer from

collecting delinquent taxes at any time by levy and sale of personal property. Whenever he has reason to believe that any person charged with tax is about to remove from the county without payment of his tax, he may, at any time, levy such tax and charges by distraint and sale of personal property. And it is hereby made his duty to levy and collect all delinquent taxes, whether they be charged upon a current year's duplicate or otherwise, as well before as after his return and settlement for a current year's taxes. (164.)

See § 6438; city, § 3087.

SEC. 6434. Fees for levy and sale. 160. For levying and making such sale of personal property to pay delinquent taxes, in addition to the fee for the demand upon the resident delinquent, the treasurer shall be allowed the same fees and charges as are allowed by law to constables for making levy and sale of personal property on execution [§ 5985,] and expenses for taking care of property levied [on.] (165.)

An officer who exacts a fee, under this section, when none has been earned, is guilty of extortion, 3 Ind. 93. For list of fees, see § 3077*a*.

ARTICLE 19—PROCEEDINGS AGAINST CORPORATIONS.

SEC.
6435. Collection from corporations.
6436. When tax is uncollected.
SEC.
6437. Bill of discovery.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6435. Collection from corporations. 161. The county treasurer shall demand payment of all taxes assessed on incorporated companies, except national banks and building and loan-fund associations, from the president or other proper officer of such companies, in the same manner as in other cases, and if not paid, shall proceed in the collection and payment thereof and penalties thereon in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him. (166.)

SEC. 6436. When tax is uncollected. 162. If such county treasurer shall not be able to collect any tax assessed upon any incorporated company, he shall return the same to the county auditor, and be allowed therefor as in other cases; and the county auditor shall certify the same, with the delinquent taxes, to the auditor of state. (167.)

SEC. 6437. Bill of discovery. 163. If any such company shall not have personal or real estate out of which to make such delinquent taxes, the auditor of state may, if he deem it expedient, cause to be filed, in a proper court, a bill against such company for

the discovery and sequestration of its property; which court shall order such part of the property of such company to be sequestered as they [?] shall [be] deem[ed] necessary for the purpose of satisfying the taxes, penalties, and interest in arrears, with cost[s] of prosecution. And they [?] [it] may also, at their [its] discretion, enjoin such company and the officers thereof from any further proceedings under their act of incorporation, and may order and direct such other proceedings as they [?] [it] shall deem necessary to compel the payment of such taxes, penalties, interest, and costs; or such tax[es], penalties, and interest may be recovered, with cost[s], from such delinquent company, by action in the name of the State, or on the relation of the auditor of state, in the circuit court of the proper county. (168.)

ARTICLE 20—COLLECTIONS FROM PERSONS REMOVED AND FIDUCIARIES.

SEC.
6438. Treasurer's special return.
6439. Auditor to certify—Fee.
6440. Entry on duplicate.
6441. Treasurer to collect.
6442. Fees of auditor and treasurer.
6443. Fiduciaries must pay taxes.
6444. Reimbursement.
6445. Sale of property of decedent or ward

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6438. Treasurer's special return. 164. Whenever any person who is delinquent for the non-payment of taxes shall have removed from the county in which he was assessed to any other county in this State, it shall be the duty of the said treasurer, in making such return, to write opposite the name of such person the words "Removed from this county," also the name of the county to which such person shall have removed, if known to such treasurer, [or] if the same can be discovered upon inquiry. (169.)

1. See § 6433; city, § 3087.

2. The treasurer can not levy before the tax is delinquent, unless he have such evidence that the debtor is about to leave the county, without payment of his taxes, as would satisfy a jury that he had cause to fear such a course. Any levy by the treasurer before such date, and without sufficient cause, renders him liable for conversion, 37 Ind. 253.

SEC. 6439. Auditor to certify—Fee. 165. It shall be the duty of the county auditor, whenever he shall be advised by the return of the treasurer, or by any other means, that any delinquent taxpayer has removed, as aforesaid (if such auditor shall be satisfied that there is a reasonable prospect of collecting said taxes), to make out a list of the taxes owing by such person, specifying therein what is state and what are county, school, and road taxes; which list shall be certified to be correct, under the hand and seal of such auditor, and the said auditor shall transmit the said list to the auditor of the county to which such person shall have re-

moved; and the said county auditor, for making out and transmitting the said statement, shall be entitled to the fee of fifty cents. (170.)

There is no reason why a city or town may not certify the taxes due from an inhabitant of such city or town who has removed to another city or town in this State to such city or town; but if he has gone into the country and taken all his property with him, there is no way in which the taxes can be collected.

Sec. 6440. Entry on duplicate. 166. The county auditor to whom such list shall be sent shall immediately enter the same on his tax duplicate, and charge the treasurer of his county with the amount, and instruct him to collect the same. (171.)

Sec. 6441. Treasurer to collect. 167. The said county treasurer of the county to which such person has removed shall proceed to collect the said taxes, interest, damages, and fees, and, in so doing, he shall be governed by the provisions of this act and the laws [in force] regulating the duties of county treasurers; and when the same is collected, the county treasurer shall pay the same into the state treasury. The county, school, and road tax[es] and fees shall be entered to the credit of the county entitled to the same, and the treasurer of state shall pay the same over to the proper county treasurer. (172.)

Sec. 6442. Fees of auditor and treasurer. 168. The auditor and treasurer of the county to which such statement shall have been sent shall be allowed the same fees as they are now allowed or may hereafter be allowed for similar services. (173.)

Sec. 6443. Fiduciaries must pay taxes. 169. It shall be the duty of every administrator, executor, guardian, receiver, trustee, or [the] person having the property of any decedent, infant, idiot, or insane person in charge, to pay the taxes due upon the property of such decedent, ward, or party. And in case of his neglecting to pay any installment of taxes when due, when there is money enough on hand to pay the same, the county treasurer shall present to the circuit or other proper court of the county, at its next term thereafter, a brief statement, in writing, signed by him as such county treasurer, setting forth the fact[s] and amount of such delinquency; and such court shall at once issue an order directed to such delinquent, commanding him to show cause, within five days thereafter, why such tax[es], penalty, and costs should not be paid; and upon his failing to show good and sufficient cause for such non-payment, the court shall order him to pay such tax[es] out of the assets in his hands belonging to the estate of said decedent, ward, or other person. And such delinquent shall not be entitled to any credit, in any settlement of said trust, for the penalty, interest, and cost[s] occasioned by such delinquency, or by the order to show cause, but the same shall be a personal charge against him, and he shall be liable on his official bond for such penalty, interest, and costs. (174.)

See § 3264. This section does not prevent the administrator from testing the petition of the treasurer by demurrer, 103 Ind. 17. The ward, heir, or *cestui que trust* is not a necessary or proper party, 78 Ind. 353; 80 Ind. 466.

Sec. 6444. Reimbursement. 170. Every executor, administrator, guardian, trustee, receiver, or person having the property of another in charge as aforesaid, who shall be put to any personal expense in paying the taxes of the estate of such decedent, ward, or other person, by advancing the money therefor, shall be allowed the amount of the same, with legal interest up to the time that he is reimbursed from the funds of such estate; and such advancement shall be deemed, in all courts, a just charge against the estate of the person or persons for whose benefit the same was advanced. (175.)

Sec. 6445. Sale of property of decedent or ward. 171. Nothing herein contained shall prevent the county treasurer from levying upon and selling the property of the estate of any decedent, or any ward, or person whose property is held in trust by another for the payment of any delinquent taxes in the same manner as other property is sold to pay delinquent taxes. And the remedy given to the county treasurers by the provisions of this act shall be regarded as only cumulative; but every person holding property, either as executor, administrator, guardian, or in any other representative or fiduciary capacity, who shall neglect or refuse to pay the taxes listed and due thereon, shall be liable in an action to the heirs of such decedent, or to such ward, or *cestui que trust*, for any damages sustained by such neglect or refusal. (176.)

1. The *private property* of the guardian can not be seized to satisfy the taxes of the ward, assessed against him as guardian, 23 Ind. 423.

2. The treasurer *may* lawfully *levy* on the *personal estate* of the *decedent* in the hands of the executor to satisfy taxes against delinquent lands; and he is not bound to proceed against the beneficiaries, or to file a claim against the estate for such unpaid taxes, 17 Ind. 213; 47 *id.* 246.

3. Taxes accrued upon *land* during the lifetime of its owner should be paid by the administrator of his estate; but those accruing thereon after his death must be made out of the land, and one purchasing the land at the administrator's sale can not deduct the amount thereof from the amount of purchase-money, 56 Ind. 131, unless the land was sold free of the liens, 49 Ind. 280.

ARTICLE 21—LIEN OF TAXES AND THEIR PAYMENT.

SEC.
6446. Lien perpetual.
6447. All property liable for tax.
6448. Effect of partial payment on sale.
6449. Payment on part of real estate.
6450. Receipt for tax—Entry.
6451. Lien-holder may pay, and keep lien.
6452. Tenant, paying may retain from rent.
6453. Treasurer, paying by mistake, has lien.
6454. Tax may be paid before sale.
6455. Cash book—Monthly report.

[1891, p. 199. Approved and in force March 16, 1891.]

Sec. 6446. Lien perpetual. 172. The lien of the State for all taxes for state, county, school, road, or township purposes shall

attach on all real estate, on the first day of April, annually, and such lien shall be perpetual for all taxes due from the owner thereof, which have heretofore accrued or shall hereafter accrue, with the interest and penalties in each case until payment; which lien shall in no wise be affected or destroyed by any sale or transfer of any such real estate. (177.)

1. See § 3086, 6422, *note* 7, and § 6427, *note* 2. The lien on land is perpetual, and the loss of personal property does not destroy it, 86 Ind. p. 550.

2. Lands *held* by husband and wife as tenants *by the entirety* are not subject to a lien for taxes upon the husband's personal property; and a purchaser of such lands for such taxes acquires no lien, 92 Ind. 298. The tax lien is superior to a prior purchase-money *mortgage*, 99 Ind. 352; 122 Ind. 99. The liens of city or town taxes and county or state taxes are equal, neither superior to the other; and a purchaser at a sale by the one takes the land subject to the lien of the other; 101 Ind. 326; 121 Ind. 180.

3. A *mortgagee* can not enjoin the sale of the land mortgaged, without paying the taxes rightfully due upon it, on the ground that the mortgagor has plenty of personal property, 76 Ind. 130. A subsequent school-fund mortgage is prior in effect to taxes previously assessed and due, 95 Ind. 175; 121 Ind. 416.

Sec. 6447. . All property liable for tax. 173. All the property, both real and personal, situated in any county, shall be liable for the payment of all taxes, penalties, interest, and costs charged to the owner thereof in such county; and no partial payment of such taxes, penalties, interest, or costs shall discharge or release any part or portion of such property until the whole be paid; which lien shall in nowise be affected or destroyed by any sale or transfer of any such personal property, and shall attach on the first day of April, annually, for the taxes of such year. (178.)

See § 3086. The lien exists until the *entire amount* is paid, 14 Ind. 465; 122 Ind. 372. Land is liable for *poll tax* of the owner, 40 Ind. 353; 41 Ind. 410. The land is liable for the taxes of the *vendor* so long as he remains in possession, 40 Ind. 353. See 71 Ind. 281. Land is liable for the vendor's taxes, although such taxes accrue after he has mortgaged it, and the subsequent owner claims through such mortgage, 41 Ind. 410; 40 Ind. 353. An actual transfer before the taxes become a lien is essential to prevent the taxes of the then owner so attaching as to not make the land liable, 71 Ind. 281 (parol gift). A bankrupt sale does not release the lien nor avoid it, 76 Ind. 68; the State may, however, follow the fund into the bankruptcy court, 76 Ind. 68. Individual property may be taken for firm taxes, 76 Ind. 68.

Sec. 6448. Effect of partial payment on sale. 174. If any such partial payment be made, and the payer desires it to be applied on any particular property, real or personal, the property so designated shall not be sold for the residue of the taxes due, if property of the same description can be found sufficient to make the balance due. (179.)

1. *Personal taxes* assessed against and charged to the owner of a lot become a lien thereon for the payment of which it is liable to be sold, 14 Ind. 465; 40 *id.* 353; 41 Ind. 410.

2. No *partial payment* of either the taxes or penalty, or of both, will release the lien from any part of the property, even in case of a sale of the part against which the taxes directly assessed were paid, 76 Ind. 130; 122 Ind. 372. See § 3086, city.

Sec. 6449. Payment on part of real estate. 175. The treasurer shall receive the tax on a part of any real estate charged with taxes, provided the person paying such tax shall furnish a particular specification of such part, and shall pay a like proportion of all the several taxes charged thereon for state, county, road, or other purposes; and if the tax on the remainder of such real estate shall remain unpaid, the treasurer shall enter such specification on his return to the county auditor, to the end that the part on which the tax remains unpaid may be clearly known, but such payment shall not discharge any lien of the State provided for in this act. (180.)

One who takes a mortgage on a tract of land which has been previously sold for taxes assessed upon it and another tract owned by the same person, is not entitled, in an action by the purchaser to foreclose his tax lien, to have the mortgaged land relieved from the lien of the taxes assessed upon such other tract, and to have it confined to the latter, 109 Ind. 199. See 122 Ind. 372 (subrogation), § 3086, city.

Sec. 6450. Receipt for tax—Entry. 176. Whenever any person shall pay the taxes charged on any property, the treasurer shall enter such payment in his cash-book, and give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the duplicate, in whole or in part of such description, as the case may be; and such entry and receipt shall bear the genuine signature of the treasurer, or his deputy, receiving such payment. And whenever it appears that any receipt for the payment of such taxes shall be lost or destroyed, the entry so made shall be read in evidence, in lieu thereof. The treasurer shall enter the name of the owner or of the person paying the tax, opposite each tract or lot of land, when he collects the taxes thereon, and the post-office address of the person paying such tax. (181.)

A vendor may pay the taxes accruing upon the land sold and before his lien has been extinguished, in order to preserve his lien; and the tax receipts are evidence of and admissible to prove the fact of payment, 70 Ind. 179. Before a tax receipt is admissible in evidence, it must be shown that the taxes paid were duly assessed, 95 Ind. 383; 33 Ind. 482. No *quietus* is issued on this receipt, R. S. 1881, § 5913.

Sec. 6451. Lien-holder may pay, and keep lien. 177. Any person who has a lien upon any lands returned for the non-payment of taxes, may pay the taxes, interest, and charges thereon. And the receipt of the county treasurer therefor shall constitute an additional lien on such land to the amount therein specified; and the amount so specified shall be collectible, with interest thereon, in the same manner as the original lien. (182.)

1. The purchaser upon *foreclosure* who has paid the taxes accrued prior to the sale can not recover from the owner the amount of taxes paid, 52 Ind. 331; 35 Ind. 527 (partners); 76 Ind. 130 (mortgagee). See § 6450, *note*.

2. Subrogation in case of sale of one tract for taxes due on several, 122 Ind.

372. A mortgagor or vendor may pay the taxes and foreclose his mortgage or lien and include the amount of taxes paid, even though there is nothing due upon the mortgage or lien except the taxes, 117 Ind. 290; 35 Ind. 527; 76 Ind. 130; even without waiting, before payment, for them to become delinquent, 70 Ind. p. 200. In all cases the person seeking to recover taxes paid on land must show that he had a lien on such land, 52 Ind. 331. But if one hold a tax lien on lands upon which it is sought to foreclose a mortgage, to which proceedings the lien-holder is a party, he must set up his lien, or he will be barred by the decree of foreclosure; and so will any one taking an assignment of the certificate of sale thereafter, 114 Ind. 303.

Sec. 6452. Tenant, paying, may retain from rent. 178. Whenever the occupant or tenant of any real estate shall have paid the taxes thereon; or the same shall have been collected of him, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof,—such occupant or tenant shall be entitled to recover, by action, the amount which such person ought to have paid, or to retain the same from any rent due or accruing to such person, from him, for the land so taxed. (183.)

The tenant or occupant may recover of the owner the amount of taxes paid, whether he has possession under a contract with such owner or with some third person. The fact of tenancy or occupancy may be proved by parol, 69 Ind. 37. A *tenant for life* must pay the taxes, and preserve the remainder, if the income is sufficient; but in an action by the remainder-men against him for a failure to do so, the burden is on the plaintiff to show that the income was sufficient, 82 Ind. 240; 16 Hun. 226; 12 S. C. 422. If one tenant in common pay the taxes he may *force contribution* from his co-tenant, 114 Ind. 273. He can not obtain, by the purchase of a tax-title, a title adverse to his co-tenant, 75 Ind. 88. Subrogation in case of sale of one tract for the taxes due on several, 122 Ind. 372. See § 6495, *note* 7.

Sec. 6453. Treasurer, paying by mistake, has lien. 179. Whenever any county treasury shall, by mistake, have charged himself with, and accounted for, any tax that shall not have been paid to him, such tax shall be deemed and taken as due him personally, whether in or out of office, and may be, by him, collected in the same way other taxes due and unpaid are collected. The same shall bear legal interest, and be collectible in the same manner as the original lien. (184.)

Sec. 6454. Tax may be paid before sale. 180. Delinquent taxes, with penalty, interest, and cost[s] may be paid to the county treasurer at any time before property is sold therefor. (185.)

Sec. 6455. Cash-book—Monthly report. 181. The county treasurer shall keep a cash-book, in which he shall enter, at the time of its reception, the amount of money received by him for taxes and from all other sources, from any person, company, or corporation, the date of its reception, and the name of the person paying the same, designating particularly each item received for taxes. He shall, at the close of each month, report the total amount of such cash entries, and the account on which it is paid, to the county auditor, who shall preserve such report. And such county treasurer shall keep said cash-book in his office during his official

term; and, on going out of office, he shall deliver the same to the county auditor, to be preserved as a public record. (186.)

Statement to state treasurer must be made each month, R. S. 1881, § 5642.

ARTICLE 22—ASSESSMENTS BY TREASURER.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6456. How he shall assess. 182. Whenever the county treasurer shall discover or receive credible information; or if he shall have reason to believe, at any time, that any of the property, real or personal, or the poll of any person, liable to pay tax, has not been assessed by the assessor; or that any real or personal property has been omitted in the assessment of any year or number of years from the assessment-book, or from the tax duplicate; or that any person, company, or corporation has, from any cause, omitted to list any part of his, her, or their property for any year or number of years, or has in any year or number of years given a false or incorrect or partial statement of any of the property required by this act to be listed; or that any real property, by reason of defective description thereof, has failed to pay taxes for any year or number of years; or that the tax for which the said property was liable has not been paid; or shall discover, before the meeting of the county board of review, that any of the assessors have not returned the full value of the assessables of any person required to be listed, or have made any erroneous return of such assessables,—he shall report the same, forthwith, to the county auditor, whose duty it shall be to correct the tax duplicate in his office, and, at the same time, to correct, in like manner, the duplicate in the hands of the county treasurer, adding such property or polls thereto, and also adding the assessments and valuation[s] thereof. The county treasurer shall then collect the taxes thereon the same as if they had been assessed by the [legal] assessor. All property so assessed shall be rated at its true cash value. As to notice to the person when not present, if residing in the county, the treasurer shall be governed by the provisions of the foregoing sections in relation to assessors and auditors [§§ 6393 and 6416]; but he shall not be required to assess the property upon actual view, or to furnish the owner thereof with a blank list. (187.)

1. The county auditor may assess omitted property, § 6416; and so may the township assessor, in certain contingencies, § 6393, see 17 Ind. 48; the board of review, § 6397, and the city treasurer, § 3070; 30 Ind. 133. There can be no assessment of omitted property by a town, for the reason that a town has no power to make any assessment; but if the assessment of omitted property is made by the county auditor, such assessment may be certified to the town, the assessment roll corrected, and tax collected.

2. The county or city treasurer can neither *add* to nor take from the assessment; he can only add *omitted* property, 30 Ind. 133; 1 Ind. App. —. See § 6416, *note* 4.

3. After the tax duplicate has been placed in the treasurer's hands, either he or the *auditor* may *add* the omitted property, 33 Ind. 111.

4. Formerly omitted property could not be assessed for *past* years, only for the *current* year, 80 Ind. 195. See § 6416, *note* 2.

5. The property need not be in *actual view* when the treasurer lists or adds it to the tax duplicate, § 6416, *note* 2.

ARTICLE 23—COLLECTION BY SALE OF REALTY.

SEC.
6457. Delinquent list—Certificate.
6458. Copy, how posted and published.
6459. Manner of sale.
6460. Sale of part of tract.
6461. Sale of more than one tract.
6462. Payment of bids—Penalty.
6463. Auditor to attend, and keep record.
6464. Certificate of sale—Assignment.
6465. Guaranty of treasurer.

[1891 S., p. 199. Approved and in force March 6, 1891.]

SEC. 6457. Delinquent list—Certificate. 183. Between the first Monday of December and the first of January, annually, the county auditor shall make out, and record in a book to be provided for that purpose, a list of lands and lots returned and remaining delinquent for taxes, including as well the lands of those whose personalty, as assessed on the tax duplicate, is less in value than the taxes charged against the lands or lots, describing such lands or lots as the same are described in the tax duplicate, and charging them with the amount of delinquent tax[es], with interest and a penalty of ten per centum on such taxes; also with the taxes of the current year; and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same, by himself or his deputy, officially. (188.)

SEC. 6458. Copy, how posted and published. 184. The auditor shall cause a copy of such list to be posted on the door of the court-house, and also in some public and conspicuous place in each township, at least three weeks before the day of sale; and shall have such list printed in one weekly newspaper of the county, for three consecutive weeks before such sale. It shall only be necessary, in the posted list, to state in the aggregate the amount of taxes, penalty, interest, and cost[s] due thereon, including the taxes for the current year. To such list shall be attached, and in like manner so posted, a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest, and charges which may be due thereon, or due from the owner[s] thereof at the time of sale, will be sold at public auction, at the court-house door of such county, on the second Monday in February next thereafter, commencing at ten o'clock of said day, and continuing from day to day thereafter until all are offered. The county auditor shall, on or before the day of sale, insert at the foot of such list, on his record, a copy of such notice, and certify on said record, immediately following such notice, the manner in which the same was posted, and the place[s] where the same was posted,

and for what length of time it was printed and posted. The expense of such printing, when had, shall be paid out of the county treasury; and it shall not exceed twenty cents for each description. (189.)

1. *City*, § 3091. A county auditor who publishes the delinquent list in his own paper can not recover from the county the cost of such printing; unless, possibly, the board of county commissioners request him to publish it, and even then it may be doubted, 72 Ind. 42.

2. Any one may contest the allowance made to the county auditor, whether he has paid his taxes or not; so long as he has paid or is liable to pay them, it is sufficient to authorize him to appeal from the allowance, 13 Ind. 247; 14 Ind. 284.

3. The county *auditor* is the *agent* of the county, authorized by statute to make a special contract for the publication of the delinquent list; and the county board, in making an allowance for such publication, must be governed by the amount which the auditor agreed to pay; and it can not be shown that the list could have been published for less than the amount agreed upon, 14 Ind. 284; 37 Ind. 347.

4. The fact that the *publication* is *not in time* will not prevent the publisher recovering from the county, if the fault is not his, 37 Ind. 347.

5. If the commissioners allow an *excessive* amount, it can not be *recovered back*, 42 Ind. 32.

6. Estimate of amount due, how made under *former law*, 42 Ind. 32. *Constitutionality* of section fixing the price in the fee and salary law of 1879, 81 Ind. 125.

7. The publication can not be in a newspaper only published on *Sunday;* and if a publication during one of the three weeks falls on Sunday,—in either event the sale will be void, 87 Ind. 158, S. C. 44, Am. R. 756.

Sec. 6459. Manner of sale. 185. On the day mentioned in the notice, the county treasurer shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed, or belonging to each person assessed, shall be sold, as will pay the taxes, interest, and charges thereon or chargeable to such person in said county. The person offering, at said sale, to pay the required sum for the least quantity of any tract shall be considered the purchaser of such quantity: *Provided*, No bid shall be received from any person not a resident of the State of Indiana, until such person shall file with said treasurer an agreement in writing consenting to the jurisdiction of the circuit court of the county in which such sale shall be made, and also filing with such treasurer an appointment of some citizen of said county as agent of said purchaser, and consenting that service of process on such agent shall give such court jurisdiction to try and determine any suit growing out of or connected with such sale for taxes. (190.)

1. A statute authorizing the sale of land for delinquent taxes must be *strictly construed*, 70 Ind. 536; 2 B. 421; 4 Ind. 132; 91 Ind. 515; 25 Ind. 134.

2. A sale of land for taxes, without a *demand* upon the owner for *personal property*, is void; but to maintain an action to set aside the sale, the party must plead or prove a tender of the sum necessary to redeem. Where the sale is set aside, the land shall again be placed on the delinquent list, 64 Ind. 360. See § 6479, *note* 4.

3. *Adjourning a sale* from the court-house door, by giving every person present notice of the fact of adjournment to a place fifty-three feet, and in full

view thereof, opposite such door, was held not to avoid the sale, 19 Ind. 148; 2 Mich. 157.

4. The sale may be conducted by the *deputy* auditor, 18 Ind. 27.

5. Formerly, under the law of 1872, a *private tax* sale was allowed, but not by a *town*. Such sales were strictly construed, 70 Ind. 536. See 99 Ind. 352.

6. A sale of land for taxes assessed against a former owner who, at the time of the tax sale, has plenty of personal property may be enjoined, 95 Ind. 156.

7. Where *two lots*, one with a house upon it and the other unimproved, both together worth at least four hundred dollars, were jointly sold together for a tax of four dollars, which was due on both lots, the sale was *set aside* as illegal, 2 B. 421.

8. In an *action to set aside* a tax sale it must be alleged that the real estate described was not legally subject to taxation for state and county or city or town purposes, or that the delinquent and current taxes and costs, for which it was sold, were not properly and legally assessed and charged against him and his property or that the several sales of his real estate for taxes by the treasurers of the county and city or town respectively, were, in some manner or for some cause, irregular, illegal and void, or that he had redeemed, or offered to redeem, his real estate from the tax sales thereof, in the manner prescribed by law, or his complaint will be had on demurrer for want of facts, 90 Ind. 520. See § 6495.

9. It is the *duty of the mortgagor* in possession, or his grantee, to keep down the taxes; and neither can purchase the land at tax sale and hold it as a lien superior to the mortgage, 99 Ind. 566.

10. A *tax sale* will not be *set aside*, where the taxes have been legally assessed, on the ground that there was *no notice of the sale*, until the owner or plaintiff has paid the taxes due or offers to pay them, 99 Ind. 352. Nor can there be any relief from a *double assessment* until one of them has been paid or tendered, 121 Ind. 416.

11. *City* sale, § 3091; *town* sale, § 3351.

Sec. 6460. Sale of part of tract. 186. When less than the whole of any tract of land shall be sold, the quantity sold shall be in a square form, as near as practicable, at the most north-westerly corner of the tract; and when less than the whole of any in-lot or out lot of any city or town shall be sold, the part sold shall extend from the main or principal street, road, or alley, forming the most convenient front to such lot, to the rear of such lot, and so as to bound the same by lines as nearly parallel with the outlines of such lot as practicable. (191.)

Sec. 6461. Sale of more than one tract. 187. When more than one tract or lot belonging to the same person shall be for sale at the same time, in the same municipal corporation or township, a part of one of said tracts or lots shall be offered first for the payment of the whole sum due from such owner on all such delinquent lands or lots, or otherwise; and if no person shall bid off a part of such tract or lot for the sum required, the said tract or lot shall then be offered to the highest bidder for cash; and if any amount shall yet remain due, or if no person bid for a part or all of one tract or lot, each of the other tracts or lots shall be offered in like manner until the required sum is realized; and if no one bids upon a part or all of said tracts or lots, separately, enough to pay the amount due, when [then] the whole of said tracts and lots shall be

offered together, and sold to pay the taxes, penalty, interest, and costs thereon. (192.)

See § 3091.

Sec. 6462. Payment of bids—Penalty. 188. Where such sale is made, the purchaser[s] at such sale shall immediately pay the amount of their respective bids to the treasurer, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or if a dispute arises as to the proper person, the same shall be paid into the county treasury. In case the purchaser fails to pay his bid, the land shall be again, forthwith, offered for sale, the same as if no sale had been made; and the purchaser so failing shall forfeit and pay, for the use of the common school fund of the county, a penalty of twenty-five per centum on the amount of his bid, to be recovered by action of debt, in the name of the treasurer, before any justice of the peace or court having jurisdiction. And the prosecuting attorney shall conduct such suit; and for his services, a fee of five dollars shall be taxed against such delinquent purchaser. (193.)

Sec. 6463. Auditor to attend and keep record. 189. The county auditor shall attend, either in person or by deputy, as the clerk of the sale of such delinquent land[s], and shall enter the same on a sufficient record-book, giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remains unsold. (194.)

The city and town clerks keep the records at city and town sales.

Sec. 6464. Certificate of sale—Assignment. 190. After payment shall have been made, the county auditor shall give the purchaser a certificate, in writing, describing the land so purchased, the sum so paid, and the time when the purchaser will be entitled to a deed for said land. And where the county surveyor has surveyed and furnished a sufficient description, said auditor shall take care that the land is described and identified by that description. Such certificate shall be signed by the county auditor, who shall register the same in his office before the delivery to the purchaser. Such certificate shall be assignable, but no assignment thereof shall be valid unless indorsed on such certificate and acknowledged before some officer authorized to take acknowledgment of deeds, or the proper county auditor, [and recorded] or recorder in his office, for which record said auditor shall be entitled to a fee of twenty-five cents, to be paid by the purchaser and treated as a part of the costs of the sale. (195.)

Mere *delay in issuing* the certificate, if the fault of the officer, does not avoid the sale, 16 Ind. 116. Formerly the certificate entitled the holder to possession of the land; and even if the sale was void, the holder of such a certificate was not liable to a prior lien-holder for the rents of the land, unless he was in possession under his certificate or had received such rents, 85 Ind. 481; Such possession, however, entitled him to the ownership of the rents, 90 Ind. 520. The assignee of a certificate when assigned obtains no greater right than the pur-

chaser, 99 Ind. 567; 70 Ind. p. 417. A void assignment can not be corrected nor enforced, 79 Ind. 233. In an action by the purchaser to foreclose his lien the certificate and deed based thereon is admissible in *evidence* without even showing that there was no personal property subject to levy and sale, 108 Ind. 97. One made a defendant to a foreclosure proceeding must set up his tax lien, held by virtue of his tax certificate, or he will lose it, 114 Ind. 303. City, § 3094.

SEC. 6465. Guaranty of treasurer. 191. It is hereby made the duty of the county treasurer, at the time he sells lands for taxes unpaid and delinquent, as is directed in this act, and after the purchaser[s] of land under such sales shall have [made] payment of the amount of their bids, respectively, to indorse upon and annex to each certificate to be given to the purchaser by the county auditor, as required by this act, his written guaranty, signed by him, warranting that the taxes due upon the tract [or tracts,] lot or lots, piece or parcel of land, which, or a portion of which, are named in such certificate, [for the years for which the same shall have been returned delinquent, have never been paid by the owner, nor by any person on his behalf, and that the same were yet due and unpaid at the time of the sale thereof named in such certificate.] And if it should, at any time, appear that such county treasurer had, before the time of making such guaranty, received, either in person or by deputy, the taxes assessed against such tract or tracts, lot or lots, piece or parcel of land, the holder of such certificate is entitled to his action upon such written guaranty aforesaid, forthwith, upon the fact becoming known that such lands were improperly sold, and without waiting the accrual of any special damage to such holder; and, in such action, the measure of damages to which such holder of such certificate is entitled shall be double the amount paid by such holder, as taxes, interest, penalty, and charges, with the lawful interest thereon. Or such holder is entitled to his action on the official bond of such treasurer, against him and his sureties, as for dereliction in duty; in which action the measure of damages is the same as above mentioned. (196.)

See § 6499.

ARTICLE 24—REDEMPTION OF REALTY.

SEC.		SEC.	
6466.	Time and cost.	6473.	When auditor to be arbiter.
6467.	By infants, idiots, and the insane.	6474.	From taxes assessed conjointly.
6468.	Of an undivided part.	6475.	Recovery in such cases.
6469.	Of a share of an undivided part.	6476.	Priority of judgment recovered.
6470.	Of a specific part.	6477.	Improvements, how affected by.
6471.	Of a specific part of undivided realty.	6478.	Auditor's memorandum and certificate.
6472.	Contribution, how made.		

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6466. Time and cost. 192. The owner or occupant of any land sold for taxes, or any other person having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: If redeemed within six months from

the day of sale, he shall pay to the county treasurer, for the use of the purchaser, his heirs or assigns, the full sum of the purchase-money named in his certificate, and all the costs of sale, together with ten per centum in addition; if redeemed after six months and within one year, he shall pay, in like manner, the purchase-money, together with costs and fifteen per centum in addition; if redeemed after one year, and within two years, he shall pay, in like manner, the purchase-money, together with costs and twenty-five per cent. in addition; and he shall also pay all taxes which have been paid thereon, with interest at the rate of six per centum per annum on such taxes. And in case the party purchasing the land, or his assigns, fails to take a tax-deed for the land so purchased, within six months after the expiration of the two years, no interest shall be charged or collected from the redemptioner after that time. (197.)

1. See *city*, § 3092; *town*, § 3352. This section has reference to sales, it has been held, that are not void, 102 Ind. 515; but this case was virtually overruled in 111 Ind. 467, and in 114 Ind. 84; and it is now held that if a tax sale is ineffectual to carry title, but carries to the purchaser the lien of the State, the delinquent tax-payer can redeem from such sale only upon the conditions prescribed in this section, 124 Ind. 254.

2. There is no law authorizing the redemption of *personal property*, 104 Ind. 459.

3. If a *co-tenant* takes an assignment of the tax certificate it amounts to a redemption of the land, and the certificate is a nullity, unless the assignment was taken under an agreement with all his co-tenants that he could take and hold it the same as if he were a stranger to the land, 75 Ind. 88.

Sec. 6467. By infants, idiots, and the insane. 193. Infants, idiots, and insane persons may redeem any lands belonging to them sold for taxes, within two years after the expiration of such disability, in the same manner as provided in the preceding section for redemption by other persons. (198.)

There is no exception in favor of a *married* woman, 90 Ind. 520. At two years from the date of sale, the auditor issues, upon request, a *deed* for the land sold, although at the time of sale and when the deed is executed, the owner is an infant, idiot, or an insane person, 97 Ind. 565.

Sec. 6468. Of an undivided part. 194. Any person claiming an undivided part of any land sold for taxes may redeem the same, on [by] paying such proportion of the purchase-money, interest, penalty, and subsequent taxes as he shall claim of the land sold. (199.)

Sec. 6469. Of a share of an undivided part. 195. Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes may redeem his undivided share, by paying such proportion of the purchase-money, interest, penalty, and subsequent taxes as he claims of the land sold. (200.)

Sec. 6470. Of a specific part. 196. Any person claiming a specific part of any lands sold for taxes may redeem his specific part,

by paying such proportion of the purchase-money, interest, penalty, and subsequent taxes as his quantity of ground shall bear to the whole quantity sold. (201.)

Sec. 6471. Of a specific part of undivided realty. 197. Any person claiming a specific part of any lands out of which an undivided part shall have been sold for taxes charged on the whole tract or lot, may redeem his specific part by paying such proportion of the purchase-money, interest, penalty, and subsequent taxes as his quantity of acres shall bear to the whole quantity taxed. (202.)

Sec. 6472. Contribution, how made. 198. Any person claiming a specific part of any lands out of which a specific part belonging to some other owner shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying into the county treasury, at any time before the expiration of the time allowed for redemption, such proportion of purchase-money penalty, and interest as his quantity of acres will bear to the whole taxed, and such payment shall operate as a redemption of a proportionate part, according to the amount paid, of the land sold. (203.)

Sec. 6473. When auditor to be arbiter. 199. In every case where a partial redemption is asked for, pursuant to the preceding five sections, the county auditor, upon the application of the redemptioner, after notice to the holder of the certificate, shall determine the proportion to be paid by the party applying to redeem; and his decision shall be final thereon. For his services in stating the proportion, the redemptioner shall pay him fifty cents. And in every case of a partial redemption, pursuant to either of the said sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the county auditor shall convey accordingly. (204.)

Sec. 6474. From taxes assessed conjointly. 200. Whenever the land of any one person shall be sold for taxes assessed conjointly on the lands of such person and the lands of another person, and such other person shall not pay his due proportion, the person whose lands shall be sold may redeem the same in [by] paying the amount due to the purchaser; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption money so paid, with lawful interest from the time of such redemption, but no suit shall be brought for the recovery of such proportions until after the expiration of the time allowed for redemption. (205.)

See § 6321.

Sec. 6475. Recovery in such cases. 201. If such owner shall not redeem the lands sold, and the same shall be conveyed by the county auditor, such owner may recover from such other person

the same proportion of the value of the land sold and conveyed that he ought to have paid of the tax[es], interest, and charges for which the land shall have been sold. (206.)

Sec. 6476. Priority of judgment recovered. 202. Every judgment obtained under either of the last two sections shall have priority, as against the lands of the defendant therein on which the tax was assessed and for which such proportionate part ought to have been paid, to all mortgages executed and all judgments recovered since the time when such taxes were assessed. (207.)

Sec. 6477. Improvements, how affected by. 203. In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, and the land on which the same shall have been made shall be redeemed as aforesaid, the premises shall not be restored to the person redeeming until he shall have paid or tendered to the adverse party the value of such improvements; and, if the parties can not agree on the value thereof, the same proceedings shall be had in relation thereto as shall be prescribed in the law existing at the time of such proceedings for the relief of occupying claimants of lands. No compensation shall be allowed for improvements made before the expiration of two years from the date of sale for taxes. (208.)

See § 6497, *note*.

Sec. 6478. Auditor's memorandum and certificate. 204. When lands sold for taxes, or any portions thereof, shall be redeemed, the county auditor shall insert a memorandum of such redemption, the quantity or description of the portion redeemed (if not the whole), the date thereof, and by whom made, on his record of sales of land for delinquent taxes, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming. (209.)

ARTICLE 25—CONVEYANCE OF REALTY.

SEC.	
6479.	Tax-deed.
6480.	Form of deed.
6481.	Form may vary.
6482.	Auditor's fees.
6483.	Deeds under former laws.
6484.	Certificates when cancelled—Lost certificates.
6485.	Register of sales.
6486.	Proceedings when sale invalid.
6487.	When sale is invalid.
6487*a*.	Refunding taxes.
6487*b*.	State's portion.
6487*c*.	Appeal.
6488.	Lien of State, when transferred.
6489.	Name of owner immaterial.
6490.	Proceedings when purchaser dies.

[1891, p. 199. Approved and in force March 16, 1891.]

Sec. 6479. Tax-deed. 205. If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of the certificate of purchase (and in case the certificate covers only a part of a tract or lot of land, then

accompanied with a survey or description of such part, made by the county surveyor), the auditor of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the State, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee-simple, subject, however, to all the claims which the State may have thereon for taxes, liens, or incumbrances. In making such conveyance, when two or more parcels, tracts, or lots of land are sold for the non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall, in any wise, become the owner [or owners] of the certificates thereof, all of such parcels shall be included in one deed. (210.)

1. Deed on *city* sale, and effect, § 3094; on *town* sale, § 3351. The tax-deed issued by a city is signed by the clerk and witnessed by the treasurer; the one issued by a town is signed by the clerk and witnessed by the marshal. See § 3094, *note* 3.

2. The deed is issued although the owner of the land at the date of the sale and when issued is under *legal disabilities*, 97 Ind. 565. See 60 Ind. 478.

3. A *school fund mortgage* is superior as a lien to a tax lien created by the assessment of taxes before such mortgage was given; and the holder of a tax-deed takes it with these infirmities, 95 Ind. 175; 121 Ind. 416.

4. A complaint to *enjoin* the *issue* of an auditor's tax-*deed* upon an illegal sale, must aver a *tender* and make an offer to pay the lawful taxes to the defendant, 102 Ind. 198; 64 Ind. 360; and the money must be brought into court, 97 Ind. 565; 114 Ind. 84; even in case of a *double assessment*, 121 Ind. 416.

Sec. 6480. Form of deed. 206. Such conveyance shall be executed by the county auditor under his hand and seal, be witnessed by the county treasurer, and be acknowledged before the county recorder or any other officer authorized to take acknowledgments, and the same shall be recorded in the recorder's office before delivery. A fee for recording shall be paid by the purchaser, and shall be included in the costs of sale. Such deed shall be *prima facie* evidence of the regularity of the sale of the premises described in the deed and of the regularity of all prior proceedings, and *prima facie* evidence of a good and valid title in fee-simple in the grantee of said deed. And such deed shall be in the following form, as nearly as the nature of the case will admit, namely:

Whereas, A. B. did, on the ——— day of ———, 18—, produce to the undersigned, C. D., auditor of the county of ———, in the State of Indiana, a certificate of purchase, in writing, bearing date the ——— day of ———, 18—, signed by E. F., who, at the last mentioned date, was auditor of said county, from which it appears that the said A. B. did, on the ——— day of ———, 18—, purchase at public auction, at the door of the court-house in said county, the tract, parcel, or lot of land lastly in this indenture described; and which lot was sold to ———, for the sum of ——— dollars and ——— cents, being the amount due on the following tracts or lots of land, returned delinquent, in the name of G. H., for the non-payment of taxes, costs, and charges for the years ———, namely: [Here set out the lands offered for sale]; *which said lands have been recorded, among other tracts, in the office of said auditor, as delinquent for the non-payment of taxes, costs, and charges due for the year last aforesaid, and a true copy of said record transmitted to the office of the auditor of state, in manner and form prescribed*

by law, and legal publication made of the sale of said lands. And it appearing that the said A. B. is the legal owner of said certificate of purchase, and the time fixed by law for redeeming the land therein described having now expired, [*and neither*] *the said G. H., nor any person in his behalf, having paid or tendered the amount due the said A. B., on account of the aforesaid purchase, and for the taxes by him since paid; and the said A. B. having demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs, and charges, as above specified; and it appearing from the records of said county auditor's office that the aforesaid lands were legally liable for taxation, and had been duly assessed and properly charged on the duplicate with the taxes for the years ——;*

Therefore, this indenture, made this —— day of ——, 18—, between the State of Indiana, by C. D., auditor of said county, of the first part, and the said A. B., of the second part, witnesseth: That the said party of the first part, for and in consideration of the premises, has granted, bargained, and sold unto the said party of the second part, his heirs and assigns forever, the tract or parcel of land mentioned in said certificate, situate in the county of ——, and State of Indiana, and described as follows, namely: [Here set out the particular tract or parcel sold]; *to have and to hold the said last-mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part, his heirs and assigns forever, in as full and ample a manner as the auditor of said county is empowered by law to sell* [*convey*] *the same.*

In testimony whereof, the said C. D., auditor of said county of ——, has hereunto set his hand, and affixed the seal of the board of county commissioners, the day and year last above written. [C.] —— [D.] ——. [Seal.]

Witness: —— —— *Auditor of —— County.*

State of Indiana, } *ss:*
—— *County,* }

Before me, the undersigned, —— in and for said county, this day personally came the above-named C. D., auditor of said county, and acknowledged that he signed and sealed the foregoing deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal, this —— day of ——, 18—.

(211.) —— —— [Seal.]

1. The *steps* necessary to vest the power of sale in the treasurer must be proved *aliunde* the tax-deed, notwithstanding the clause providing that the deed shall be *prima facie* evidence of the regularity of the sale and of the premises described in it, and of the regularity of all prior proceedings, and of a good and valid title in fee-simple in its grantee, 23 Ind. 433; 4 B. 70, 494. (In the two last cases the statute provided that "such conveyance shall be conclusive evidence that the sale was regular according to the provisions of this act.") The legislature can not make the *recitals* in the deed *conclusive*, 23 Ind. 46; 19 Ind. 470.

2. Unless *witnessed* by the county *treasurer* the deed is not presumptive evidence of a legal title in the holder, 93 Ind. 256. In such a case there can be no recovery of the land, although the tax lien may be foreclosed, 100 Ind. 45.

3. A tax-deed can not be *reformed*, 86 Ind. 81; but *not describing the county* and State, where the section, township and range is given, does not render it void. Such a deed is valid, 86 Ind. 81.

4. Of this deed it has been said: "The statute does not make the deed *prima facie* evidence of title; it only makes it evidence of the particular facts recited in it, and there are many material facts requisite to show a valid sale under the statute that are not recited in the deed, all of which must be shown affirmatively by the party claiming under such title," 25 Ind, 134; 57 Ind. 276. "We take it," says the court elsewhere, "to be clear that the provision that the conveyance shall vest in the grantee an absolute estate in fee-simple has reference to the quantity of estate to be conveyed by such deed, and can not be taken to mean that such estate shall vest in the grantee unless the law has been complied with, in the steps required to be taken to authorize the sale, and in

the making of the sale. The deed is not conclusive evidence of anything but the facts recited therein. Hence, every fact necessary to constitute a valid sale, not recited in the deed, must be otherwise shown, or no title will be conferred by the deed," 60 Ind. 478; approved in 86 Ind. p. 85.

5. *Adverse possession* does not render the deed void, 7 Ind. 232; 14 Ind. 242; 60 Ind. 478. See 62 Ind. 236.

6. The deed vests a title in *fee-simple* in the grantee, if the sale is valid; even though the owner had only an equitable title in the land, 14 Ind. 242.

7. The *recitals* that certain facts appear from the records of the auditor's office is not equivalent to the recital that they exist, 23 Ind. 46.

8. To make a valid title under a tax-deed that is invalid, *twenty years possession* adverse to the owner is essential, 60 Ind. 478; 75 Ind. 88 (co-tenant).

9. One *co-tenant* can not obtain a valid tax-deed of the property held in tenancy. If he purchase the land at tax sale, or the certificate after the sale is made is assigned to him, it amounts to a payment of the taxes or a redemption of the land, 75 Ind. 88. See § 6452, *note*.

10. A deed *prematurely issued* does not change the rights of the parties, 104 Ind. 75.

SEC. 6481. Form may vary. 207. In case circumstances should exist requiring any variation from the foregoing form, in the recital part thereof, the necessary change shall be made by the county auditor executing such deed; and the same shall not be vitiated by any such change, provided the substance be retained. (212.)

SEC. 6482. Auditor's fees. 208. The county auditor shall be entitled to receive for each tax-certificate fifty cents, and for each tax-deed one dollar, which shall include the acknowledgment; and in case two or more deeds be made to the same person, the auditor shall be entitled to demand and receive from each person seventy-five cents for the first deed and fifty cents for each additional one. (213.)

SEC. 6483. Deeds under former laws. 209. The county auditors are hereby authorized to make deeds for lands in their respective counties, sold for taxes under any former law, where the same remains yet to be done; and the deeds so made shall be [as] good and valid as if made by the person authorized under any former law to make them. (214.)

SEC. 6484. Certificates, when canceled—Lost certificates. 210. When conveyances are delivered for lands sold for taxes, the certificates therefor shall be canceled and filed away by the auditor. And in case of the loss of any certificate, on being fully satisfied thereof by due proof, or upon the production of a certified copy thereof, the auditor may execute and deliver the proper conveyance, and file such proof [or copy] in his office. (215.)

SEC. 6485. Register of sales. 211. A register shall be kept by the county auditor in his office, containing a brief description of the lands by him conveyed on sales for taxes, the name[s] of the person[s] charged therewith, the date[s] of the sale[s], the

name[s] of the purchaser[s], the amount for which it sold, the name[s] of the grantee[s] in the deed[s], and the date[s] of [their] its execution. (216.)

SEC. 6486. Proceedings when sale invalid. 212. Whenever the county auditor shall discover, prior to the conveyance of any lands sold for taxes, that the sale was, for any cause whatever, invalid, he shall not convey such lands; but the purchase-money and the interest thereon shall be refunded out of the county treasury to the purchaser, his representatives or assigns, on the order of the county auditor; and such land, if originally liable to taxation, being still delinquent, shall again be placed on the delinquent list, and the amount so refunded. with interest, be collected as in other cases. (217.)

1. A decree setting aside a tax sale renders the county liable for the amount paid by the purchaser, unless he has received the amount from the owner of the land, 64 Ind. 360. When a decree is entered, setting aside an illegal sale, the land should not be deemed free of the lien, if the taxes are yet unpaid, but it must again be placed on the delinquent list, 64 Ind. 360. Formerly the action to set aside or enforce a tax sale had to be brought within five years, 81 Ind. 491; 93 Ind. 256.

2. The purchaser at a city or town sale *assumes all risk*, and if he fails to acquire title or a lien, the city or town is not liable to refund the purchase-money, except in the exact instances provided by statute, 84 Ind. 467; 98 Ind. 182; 29 Ind. 486; 107 Ind. 494; 110 Ind. 174; 121 Ind. 180; but if it is shown that the land was not liable to taxation, or that the taxes had been paid before sale, such city or town, or even a county (if the sale is by the county), must refund the money paid, with interest, 98 Ind. 182; 101 Ind. 150. If the description is so insufficient that no lien can be enforced the money paid must be refunded, 110 Ind. 174; 118 Ind. 323; 123 Ind. 394.

3. The *judgment* of a court refusing to enforce a tax lien does not *conclude a city*, town or county making the sale; and, therefore, the mere rendition of such judgment does not render it liable to refund the purchase-money, 98 Ind. 182. In fact, such a judgment is not entitled to go in evidence. See 107 Ind. 494. But if the owner of the land, in one action enjoins the city or county treasurer from issuing a deed, and it is decreed that the purchaser acquired no lien, the judgment is conclusive against such city or county, in an action to compel a refunding, 118 Ind. 323.

4. A *complaint* to recover back money paid at a tax-sale on the ground that the land sold was exempt as an institution of learning must show that at the time the taxes were levied the property was so used, 29 Ind. 486. So a complaint must show that the plaintiff acquired no lien on the land sold, 107 Ind. 494; 110 Ind. 174; 118 Ind. 323. See § 6487*a*.

5. If *annexation* proceedings are *void*, a city or town may be compelled to refund all money received at tax sales of land or lots within such annexed territory, 101 Ind. 150.

6. If the purchaser can *enforce a lien*, the county, city or town is not liable to refund the money paid with interest; it is only liable to refund when the sale is so void that it will not even convey a lien, 108 Ind. 174; 121 Ind. 180; 123 Ind. 394. The fact that the owner had personal property will not entitle the purchaser to have his money refunded, 108 Ind. 174.

7. Nor is the purchaser entitled to any relief from the mere fact that his lien has been reduced at the suit of the land-owner, 107 Ind. 494.

8. The *remedy* of the purchaser is wholly *statutory*, and unless he can bring his complaint within some provision of the statute it will be bad, 107 Ind. 494; 110 Ind. 174.

9. The *test* is that if the sale is such as it will not enable the purchaser to secure a lien, thus being void, he is entitled to relief, but if it is simply ineffectual to convey a title, he is not so entitled, 110 Ind. 174. See § 6487*a*, *notes*.

10. Probably *mandate* lies, in a proper case, to compel a refunding, 110 Ind. 184. See, however, § 6487*a*, *note* 1.

Sec. 6487. When sale is invalid. 213. No sale or conveyance of land for taxes shall be valid if, at the time of being listed, such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty; and, in all such cases, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, upon warrant order of the county auditor. (218.)

1. Sales made under the *law of* 1872 are governed by this section, 118 Ind. 323.

2. The description must be so indefinite as to fail to carry a lien, to authorize a refunding, 123 Ind. 394; 124 Ind. 254; but a judgment against a city adjudging a refunding is binding, whether there was an invalid description or not, 118 Ind. 322. See § 6486, *notes*.

[1853, p. 131. Approved March 2, 1853, and in force July 24, 1853.]

Sec. 6487*a*. Refunding taxes. 1. In all cases where any person or persons or body politic or corporate shall appear before the board of commissioners of any county in this State, and establish, by proper proof, that such person or body politic or corporate has paid any amount of taxes which were wrongfully assessed against such person or body politic or corporate in such county, it shall be the duty of said board to order the amount, so proved to have been paid, to be refunded to said payer from the county treasury, so far as the same was assessed and paid for county taxes. [R. S. 1881, § 5813.]

1. The *action* of the board under this section is *judicial* and not ministerial; and if the commissioners refuse to refund the illegal tax the remedy is by appeal and not by *mandate*, 63 Ind. 497. See, however, § 6486, *note* 10.

2. The taxes refunded must have been "wrongfully assessed," 91 Ind. 528; 95 Ind. 182. Merely showing that the tax was irregularly assessed is not enough; it must be shown it was unjustly assessed and levied, 100 Ind. 570.

3. Formal and elaborate pleadings are not required; the presentation of the claim and its establishment by proof that they were wrongfully assessed is sufficient, 91 Ind. 528. The claim in the form of an account is sufficient, 92 Ind. 229; 98 Ind. 279. But facts must be shown that show *prima facie* that he is entitled to relief, 100 Ind. 570.

4. Illegal taxes that have been *voluntarily* paid may be recovered back; but in such a case it must appear not merely that the assessment was irregular, but also that the taxes were neither justly nor equitably due, 91 Ind. 528; 98 Ind. 279. Thus if property be not listed, with a view to defraud the revenue, and is afterwards illegally listed and assessed, and the taxes thereon charged voluntarily paid, the statute does not authorize a refunding thereof, the assessment in such an instance not being wrongful in the sense of the statute, 91 Ind. 528.

5. It is not enough to authorize a refunding that the *assessment* was made *by* the *wrong officer*, 98 Ind. 279.

6. One who consents that his *assessment* may be *increased* by the treasurer by the addition of personal property not listed, can not, after paying such addi-

tional tax, claim to have it refunded, upon the ground that the property should have been listed against a pledgee, who held it in possession, 98 Ind. 279.

7. Taxes assessed and paid upon *omitted property* for past years, where no law authorized the listing of omitted property except for the current year, could not be recovered back, 100 Ind. 570. But if the *valuation* of property has been unlawfully *increased*, the extra taxes thus created must be refunded, 117 Ind. 410.

8. This section does not apply to a purchaser at a tax sale where his lien has failed, 107 Ind. 494. See § 6487.

Sec. 6487*b*. State's portion. 2. In all cases where a portion of the amount so wrongfully assessed and paid shall have been for state purposes, and shall have been paid into the state treasury, it shall be the duty of the said board of commissioners to certify to the auditor of state the amount so proven to have been wrongfully paid, under the seal of said board of commissioners; and the auditor of state shall, thereupon, audit the same as a claim against the treasury, and the treasurer of state shall pay the same out of any moneys not otherwise appropriated. [R. S. 1881, § 5814.]

The court will presume that the excess of taxes caused by the illegal increase of valuation by the state board of equalization in 1869 was refunded as required by the act of March 8, 1873. In such a case it was the duty of the county board to refund the illegal tax collected to the tax-payer, 92 Ind. 229; 50 Ind. 436; see 36 Ind. 175.

Sec. 6487*c*. Appeal. 3. If any board of county commissioners refuse to hear the proofs offered by any person or body politic or corporate, complaining or offering to complain before them, that he or it has been wrongfully assessed, the person or body politic or corporate so offering to complain shall have the same right of appeal from the decision of said board, so refusing to hear such complaint, that he or it would have in other cases. [R. S. 1881, § 5815.]

1. The board's action is judicial, and the remedy upon refusal to refund is by appeal and not mandate, 63 Ind. 497. But see § 6487, *note* 10.

2. An appeal lies, also, under the general law, from a refusal to re-pay, 20 Ind. 178.

[1891 S., p. 199. Approved and in force March 6, 1891.]

Sec. 6488. Lien of State, when transferred. 214. If any conveyance for taxes shall prove to be invalid and ineffectual to convey title because the description is insufficient, or for any other cause than the first two enumerated in the preceding section, the lien which the State has on such lands shall be transferred to and vested in the grantee, his heirs and assigns, who shall be entitled to recover from the owner of such land the amount of taxes, interest, and penalty legally due thereon at the time of sale, with interest, together with the amount of all subsequent taxes paid, with interest; and such lands shall be bound for the payment thereof. (219.)

See § 6497. If the sale is ineffectual to carry the title, but carries to the purchaser the lien of the State, the delinquent tax-payer can redeem from such sale only under the provisions of § 6466, 124 Ind. 254.

Sec. 6489. Name of owner immaterial. 215. The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner. (220.)

The fact that land was sold in the name of a stranger is no objection to the validity of the sale, 94 Ind. 201; 71 Ind. 244; 16 Ind. 506. Sale for taxes owed by a former owner does not vitiate it, 94 Ind. 201; 102 Ind. 385; 49 Ind. 272; 71 Ind. 280; 94 Ind. 201; 99 Ind. 352; 104 Ind. 75; 114 Ind. 273, 325.

Sec. 6490. Proceedings when purchaser dies. 216. In all cases of sale of lands for taxes, if the purchaser or his assigns shall die before a deed shall be executed on such sale, the deed may be executed by the auditor to and in the name of the deceased person (if such deceased person, being still alive, would be entitled to a deed), or to his heirs-at-law or devisees; which deed shall vest the title in the heirs or devisees of such deceased person immediately previous to his death (or the executor or administrator may assign the certificate of purchase, and the deed may issue to the assignee thereof), and in like cases which have heretofore occurred, the same rule shall apply, and all deeds heretofore issued in the name of any deceased person who if living at the time of the execution thereof would have been entitled thereto, shall have like effect as above provided. (221.)

The remedy given under § 6497 to enforce a lien belongs to the heirs and not to the personal representatives of the deceased, 84 Ind. 160.

ARTICLE 26—COLLECTION FROM UNSOLD REALTY.

SEC.		SEC.	
6491.	List to prosecutor—Suit.	6492.	Proceedings — Decree — Prosecutor's fee.
6491*a*.	Advertisement and sale of lots for cash, etc.—Cities.	6493.	Evidence.
		6494.	When several parcels, only one suit.

[1891, p. 199. Approved and in force March 6, 1891.]

Sec. 6491. List to prosecutor—Suit. 217. The county auditor shall make a list each year, before the thirty-first day of December, of all the lands, town and city lots, which have been offered for sale for three years successively, after the passage of this act, and which have remained unsold for want of bidders, and in said list he shall describe the name of the person to whom said lands or lots are taxed, if known or if unknown, as they appear on the duplicate, and the aggregate amount of the taxes, penalty, interest, and costs due thereon, and a description of the lands or lots upon which the taxes are assessed, and such description shall be sufficient, if made in the manner that lands may be assessed for taxation under this act; and the auditor, if he finds the description on the tax duplicate or delinquent list imperfect, shall correct and perfect the same, and he may amend such description at any time, which list he shall certify, under his hand and seal of office, to be

a true and correct list of such unsold lands, and he shall deliver the same to the prosecuting attorney, with an order to him to proceed to enforce the lien of the State of Indiana for such taxes, penalty, interest, and costs upon such lands or lots. Such prosecuting attorney shall also procure from the treasurer of any city or incorporated town within the limits of which such real estate is situate, a statement of the aggregate amount of the municipal taxes, penalty, interest, and costs due thereon. Before such prosecuting attorney shall proceed to enforce such lien, he shall ascertain if the same can be done, the name and residence of the owner of such lands or lots, and he shall proceed to bring suit in the circuit court of the county, in the name of the State of Indiana, on the relation of the prosecuting attorney, against such owner, making parties thereto all persons who claim to have an interest in said lands and lots, or who appear by the public records of the county to have judgment liens, mortgage liens, or other liens of record, upon said lands or lots; and also the city or town in which said real estate is situate, and requiring them to assert such liens or claims in said suit. The city attorney or attorney of such town, shall appear for the city or town in such case and assert its claim, and in so doing he shall be allowed a docket fee of five dollars, which shall be taxed as costs. The process shall be issued and served and publication made, and all the proceedings conducted in the same manner as ordinary civil suits to foreclose mortgages are conducted, and the judgment obtained upon the lien for such taxes, penalty, interest, costs, and charges, shall have priority over all other liens upon such lands or lots, and next in order of priority shall be the judgment obtained for the taxes, penalty, interest, and costs due for municipal purposes to the city or town in which such real estate is situated, and such liens shall in nowise be affected or destroyed by any sale or conveyance of such lands or lots, or by any misnomer on the tax books or assessment books of the owner of said lands or lots. (222.)

1. Practice under early statute, 4 B. 258; 5 B. 65; 6 B. 25, 36. The action must be commenced in the county where the land is situated, 106 Ind. p. 161.

2. If the land does not bring enough to pay the taxes and the costs of the officers, the latter can not claim their fees from the county, 124 Ind. 467.

SEC. 6492. Proceedings—Decree—Prosecutor's fee. 218. The decree in such suit shall provide that the property shall be sold by the sheriff as other lands are sold on execution, at the court-house door of the proper county, to the highest bidder for cash, by the sheriff of the county. And the judgment as to the lien for taxes, penalty, interest, and costs shall be without any relief from valuation or appraisement laws, and without stay of execution. And the first proceeds of such sale, after the payment of costs of suit, shall be applied to the extinguishment, *pro tanto*, of the judgment for taxes, penalty, interest, and costs, and paid into the county

treasurer's office, and the residue shall be apportioned in such manner as the court may direct, according to the rights of the parties; but in cases where there are no lien-claimants or conflicting claims of ownership, the court shall direct that the surplus, if any, shall be paid into the treasurer's office, for the use of the owners of such lands or lots. A docket fee of ten dollars for the prosecuting attorney shall, in each case of foreclosure of a tax lien, be entered and charged as costs on the judgment against such lands or lots, when such judgment is obtained, and collected as other costs. (223.)

SEC. 6493. Evidence. 219. In such suits and in all other suits, and for any purpose of evidence or authentication, the records made by the county auditors respecting delinquent lands, the manner of advertisement of sales thereof, the sales made of the same, and the conveyances thereof executed, and all copies of such records, or of any other papers required by this act to be made out, duly certified to be such by the proper county auditor under his seal of office, shall be received as *prima facie* evidence of the facts contained therein. (224.)

SEC. 6494. When several parcels, only one suit. 220. Where there are several parcels of land or lots belonging to the same person, and which have been offered for sale for non-payment of taxes for three years successively, and have remained unsold for lack of bidders, all of such lands and lots shall be included in one suit. (225.)

ARTICLE 27—TAX-TITLES.

SEC.
6495. Proof required to defeat title.
6496. Suits to quiet title.
6497. Lien, when transferred to grantee.
6498. Tax not invalid for want of form.
6499. When county officers are liable for neglect.

[1891 S., p. 199. Approved and in force March 16, 1891.]

SEC. 6495. Proof required to defeat title. 221. In all suits and controversies involving the title to land claimed and held by virtue of the deed executed by the county auditor for non-payment of taxes thereon, under this or any former tax law, the person claiming by adverse title to such deed shall be required to prove, in order to defeat the title conveyed by such deed, either that the land described therein was not subject to taxation at the date of assessment of the tax for which it was sold; or that the taxes, for the non-payment of which the land was sold, were paid to the proper officer within the time limited by law therefor; or that the same had not been assessed for the taxes for the non-payment of which it was sold; or that the same had been redeemed pursuant to law; or that a certificate in proper form had been given by the proper officer, within the time limited by law for paying taxes or

for redeeming from sales made for the non-payment thereof, stating [that] no taxes were due at the time such sale was made, or that the lands were not subject to taxation. (226.)

1. Notwithstanding the exceeding strong provisions of this section it has been held that a sale of land without a demand having first been made upon the owner for personal property is void. Such was the rule before this section became a part of the law of this State, and the courts seem unable to extricate themselves from the toils in which that rule has involved them. It seems clear that the legislature intended that all tax sales should stand, unless they were rendered void by one of the facts enumerated in this section. This is clear, from the fact that this section requires that in all suits and controversies involving the title to land acquired by a tax-deed the title shall stand unless the adverse claimant prove "either that the land described therein was not subject to taxation at the date of the assessment of the tax for which it was sold; or that the taxes, for the non-payment of which the land was sold, were paid to the proper officer within the time limited by law therefor; or that the same had been redeemed pursuant to law; or that a certificate in proper form had been given by the proper officer, within the time limited by law for paying taxes or for redeeming from sales made for the non-payment thereof, stating that no taxes were due at the time such sale was made, or that the lands were not subject to taxation." This is an express enumeration of instances in which tax titles shall be held void, and, in accordance with the maxim, "*Enumeratio enius est exclusio alterius*," it excludes all other instances. Of course, if an assessment or levy is not shown, there is nothing to show that the land was subject to taxation; but to say that the mere ownership of personal property subject to levy and sale for taxes shall avoid the sale, is to add on another cause, not enumerated in the statute, for the holding a tax sale invalid. This maxim translated is: "The special mention of one thing implies the exclusion of another; or, the special mention of one thing operates to the exclusion of anything different from that expressed." Trayner (3 ed.) on Maxims, 182; Broom's Maxims, 651; Wharton's Maxims, 87. Yet the supreme court, in an early case, which has been followed up to the present day, said: "A tax sale is good for nothing where real estate is sold for taxes when the owner has personal property subject to sale, in the county, which is not sought for by the officer," 17 Ind. 213; 32 Ind. 379; 64 Ind. 360; 85 Ind. 481.

2. Before a tax-deed can be introduced in evidence, it must be *shown* by proof that the owner of the land had *no personal property* in the county subject to levy and sale for the delinquent taxes, 25 Ind. 134; 57 Ind. 276; 28 Ind. 347; 25 Ind. 134; 14 Ind. 465; 75 Ind. 88; 74 Ind. 575; 81 Ind. 208; 85 Ind. 481; but such is not the case where the action is simply to foreclose the tax lien, 108 Ind. 97.

3. But any one who seeks to avoid the tax-deed by reason of personal property must show that it was in the county and subject to levy and sale before the sale of the land took place, or his plea, to avoid the sale, will be bad, 7 Ind. 565.

4. Several cases seem to hold that a recital in a tax-deed that the owner of the real estate had no personal property subject to sale may be shown by a recital in the deed, 28 Ind. 347; 86 Ind. 81; 25 Ind. 134; 75 Ind. 88; 74 Ind. 575; but now under 91 Ind. 515, a recital of that fact is foreign to the deed and of no value whatever as evidence. Yet see 96 Ind. 291.

5. But in an action to set aside a tax sale, for the reason that the owner had plenty of personal property at the time of the sale of the land, subject to levy and sale, it must be alleged and proved that the amount due upon the land was paid or tendered before the action was brought, 64 Ind. 360; 25 Ind. 281. The issuance of a deed can not be enjoined merely because there was personal property at the time of the sale, 111 Ind. 467; or that there was a *double assessment*, 121 Ind. 416.

6. "While personal property is the primary fund out of which taxes are to be paid, still the treasurer is not, at least as against the tax-payer, bound to resort to *extraordinary means or diligence* to find personal property to sell in

discharge of taxes which are a specific lien upon the land which he actually sells." Therefore it was held that in an action by the owner against the county treasurer for selling the plaintiff's land, alleging that at the time he had plenty of personal property within the county sufficient to make the taxes, of which the defendant was informed by the plaintiff, the character of such personal property, that it was subject to seizure and sale, and that it was shown to the officer, must be alleged or the complaint will be bad on a demurrer for want of facts, 82 Ind. 293.

7. One *tenant* can not purchase the property at tax sale owned by him and his co-tenant, and procure a good title thereto. His purchase inures to the benefit of them both, 75 Ind. 88; 94 Ind. 14. But this does not apply where, prior to the sale, the co-tenant conveys his interest to the purchaser, 119 Ind. 421.

8. One who takes a *mortgage* on a tract of land which has been previously sold for taxes assessed upon it and another tract owned by the same person, is not entitled, in an action by the purchaser to enforce his lien, to have the mortgaged land relieved from the *lien* of the taxes assessed *upon* such *other tract*, and to have it confined to the latter, 109 Ind. 199.

9. A *sale* of land for taxes where the taxes are *owed* by a *former owner* of the land may be *enjoined* by the present owner on the ground that the former owner still has plenty of personal property out of which the taxes can be made, 95 Ind. 156.

10. In proving title by tax sale it is said that "*Every* substantial *requisite* of the law must be complied with. No *presumption* can be raised in behalf of the collector to cure any *radical defect* in his proceedings; and the proof of regularity devolves upon the person who claims under the collector's sale." Consequently it was held that the one claiming under a tax-deed must show that every essential step was taken to fasten not only a legal tax upon the land, but to make the sale legal, 2 B. 421; 23 Ind. 32; 25 Ind. 134; 28 Ind. 479. The claimant must show that the land sold had been legally *assessed*, 5 B. 98; but not a *levy*, 94 Ind. 201 (*contra*, 5 B. 98; 8 B. 336; 11 Ind. 2); the *advertisement*, 4 B. 70; the delivery of the tax *duplicate* to the treasurer, and, in case of a city or town, that it was accompanied by a *warrant*, 4 B. 494.

11. "Each and *every step*, from the listing of the land for taxation to the consummation of the title by delivery of a deed to the purchaser, is a separate and independent fact. All these facts, from the beginning to the end of the proceeding, must exist; and if any material link in the chain of title be wanting, the whole falls for want of sufficient authority to support it." The person claiming through these proceedings has the *burden* of showing that such steps were taken, 23 Ind. 32, 433; 6 B. 36; 11 Ind. 2; 91 Ind. 515; 25 Ind. 134; 60 Ind. 478; 86 Ind. 81; 25 Ind. 134; 28 Ind. 347. It must be shown that "the land was liable for *all* the taxes for which it was sold," 8 B. 581; 37 Ind. p. 256; 3 Ind. 528; 71 Ind. 281; 85 Ind. 449; 91 Ind. 515; 121 Ind. 164. The only *exception* made as to these general statements is that the holder need not show a levy nor the proceedings of the board of equalization, 94 Ind. 291.

12. If the *law* under which the sale is made has been *repealed* the sale is void, 8 B. 581, unless there is a saving clause, 16 Ind. 506; 76 Ind. p. 135; 77 Ind. 316; 6 Clarke (Ia.) 5; 11 Texas, 311. But an express saving clause is not required, if the intention to preserve and continue rights acquired is clearly apparent. Thus a re-enactment of a tax law, word for word, or substantially so, will preserve all rights acquired under it before its re-enactment, 77 Ind. 316.

13. In a complaint to *quiet title*, based upon a tax-deed, a general averment that the plaintiff is seized in fee-simple, and that the defendant is making an unfounded claim to the land, is sufficient; but if, after making these averments, the complainant then proceeds to set forth the fact that his title is derived through a tax-deed, it will be bad if the allegation is that he 'claims title by a tax-deed and sale by the county auditor of P. [where the lands are], which deed is duly recorded," etc. He, in such an instance, must show "that every provision of the statute under which the sale was made has been complied with," 86 Ind. 81. See § 6459, *note*.

14. *Adverse possession* does not render a tax sale and deed, for that reason, void, 7 Ind. 232. See 62 Ind. 236.

15. Sale of land for taxes owed by a *former owner* does not vitiate such sale, 94 Ind. 201.

16. One who conveys land with a general *warranty* is estopped from claiming title by virtue of a tax sale, if any part of the taxes for which it was sold were upon it at the time of his conveyance, although the sale took place after the conveyance was executed, 94 Ind. 201. See 121 Ind. 416, in case of a re-conveyance.

17. A city, town or county selling land or property for taxes *does not warrant* the title, or that the sale is valid, 84 Ind. 467; 98 Ind. 182.

18. The person in possession under a void tax-deed is not liable to a person who has no interest in the land for the *rents* and profits he may have received from the land described in the deed, 109 Ind. 199. Nor to the owner, if not in possession of the land, unless he has actually received such rents, 85 Ind. 481.

19. The provision which makes the *deed prima facie* evidence of the facts therein recited is in derogatory of the common law, and must *be strictly* construed, 23 Ind. 32.

Sec. 6496. Suits to quiet title. 222. Any person holding any deed of lands or lots executed by the county auditor for non-payment of taxes may commence a suit in the circuit court of the county where such lands lie, to quiet his title thereto, without taking possession of such lands; and all parties who have or claim to have or appear of record in any of the public offices of the county where such land or lot is situated, to have any interest in or lien upon such lands or lots, shall be made defendants in such suit. And no outstanding unrecorded deed, mortgage, or claim shall be of any effect as against the title or right of the complainant as fixed and declared by the decree made in such cause. The courts shall cause the facts to appear of record, and if, upon the hearing of such cause, it shall appear that the complainant's title was or is invalid for any cause, such suit shall not be dismissed by the court; but the court, in cases where the tax was due and unpaid, or where the complainant's title was invalid for defect or uncertainty of description, shall ascertain the amount due [to] the complainant for principal and interest [said interest] to be computed at twenty per cent. per annum, and shall decree the payment thereof within a reasonable time by the owner of such land; and in default thereof, shall direct that such land or lot be sold therefor, and that the equity and right of redemption of all defendants in such suit, and all persons claiming under them, shall be forever foreclosed: *Provided*, That [the] proceedings in such cases shall be conducted in the same manner, as near as may be, in conformity with the practice in the case of foreclosure of mortgages. (227.)

1. If the land lies in Marion county, the suit may be brought in the *superior court* of that county, 119 Ind. 421; or in a proper case in the United States court, 26 N. E. Rep. 153.

2. An *action* need not be brought specifically to enforce the statutory lien; such lien may be enforced although the complaint is simply to *quiet title*, 85 Ind 481; 93 Ind. 256; 84 Ind. 342; 109 Ind. 199; 57 Ind. 276; 121 Ind. 180. If the pleader undertakes to state the particulars of the tax title he must state all of them or the complaint will be bad as a complaint to quiet title; yet it will be good as a complaint to enforce his tax lien, 96 Ind. 291. He need not allege, in the latter instance, that the lands were assessed, 75 Ind. 244; 81 Ind. 294. But

a complaint that the plaintiff is the owner in fee-simple by virtue of a tax-deed, is sufficient, 109 Ind. 199.

3. If it is alleged that the title failed because of an insufficient description the *burden* is on the plaintiff to show that the tract definitely described in the complaint was the one that it was intended to sell for taxes; 84 Ind. 198; 84 Ind. 294; 108 Ind. 174. But if the sale is not void for want of description, then the plaintiff need neither allege nor prove that the land was liable to taxation, that it had been assessed, that the taxes were unpaid at the time of the sale, or that there had been no redemption from the sale; for in all these matters the burden is on the defendant to show the contrary, 104 Ind. 75.

4. In case the paper title is too imperfect to convey a title, the lien may be enforced. See § 6325, *notes;* 81 Ind. 180, 294.

5. The holder of the tax lien may proceed *against all* who have an interest in the land without specifying the particular interest of each; and he is entitled to a joint judgment against them, where their separate interests have not been put of record before the sale or even before the assessment of the lands, 84 Ind. 342.

6. In an action to enforce a tax lien (not to quiet title), so affirmatively appearing from the pleading, a *new trial as of right* can not be successfully demanded, 105 Ind. 420.

7. A *tax lien* is *superior* to all prior private liens, and a *judgment* enforcing it cuts off all such liens where the holders thereof are made parties to the foreclosure, 119 Ind. 421. See also 122 Ind. 99.

8. One who now purchases at a private sale can not recover back his money; for, no law authorizing such a sale, the money is paid voluntarily, for which there can be no recovery, 110 Ind. 208.

SEC. 6497. Lien, when transferred to grantee. 223. If any conveyance made by the county auditor, pursuant to a sale made for the non-payment of taxes, under this or any former tax law, shall prove to be invalid and ineffectual to convey title, for any other cause than such as are enumerated in the section immediately preceding the last section, the lien which the State had on such land, for state, county, township, and all lawful purposes, shall remain in full force, and shall be transferred by such deed, to the grantee, and vested in him, his heirs and assigns, who shall be entitled to recover from the owner of such lands the amount of such legal taxes, together with all lawful charges, with interest, at twenty per cent. per annum, from the date of such sale, and also the amouut of all subsequent taxes paid, with like interest; and such claim shall be a lien upon such lands, and the same shall be bound for the payment thereof. And in case judgment [shall] be rendered against the person holding the title from the auditor as aforesaid, for the recovery of such lands, in an action of ejectment or other action, either at law or in equity, the court shall ascertain the amount due to the party holding such tax-deed for principal and interest, and for all improvements made by him on such lands, and shall decree the payment thereof within such reasonable time as may be determined by such court, and in default of such payment, [this court] shall decree that such lands be sold therefor, or sufficient thereof to pay the amount of such improvements, principal and interest due, to the party having the auditor's deed, his heirs and assigns: *Provided*, That there shall be no right of redemption

of such property after the date of sale, and that the sale shall be without the benefit of appraisement laws, and the sheriff shall, upon the receipt of the purchase-money, execute to the purchaser a deed in fee-simple. (228.)

1. See § 6488. This section applies to *city and town sales*, and the holder of a deed or certificate is entitled to receive the same rate of interest as if his lien was acquired under a county sale, 85 Ind. 481. See 124 Ind. 254.

2. The *general interest law* of 1879 does not fix the rate of interest in tax sales, 85 Ind. 481.

3. Mere representations by the vendee of a tax claim to the vendor, that he purchases it in the interest of the owner of the land, and thereby secures it at a reduction on the sum due, will not, in the absence of an agency or an agreement that the owner is to have the benefit of the reduction, prevent him from enforcing the lien for the full amount due, 104 Ind. 451.

4. If the *purchaser* of the land at tax sale *dies*, his heirs must enforce the lien, 84 Ind. 160; 38 Ind. 492. Only the *last holder* or vendee of the tax-deed can maintain the action, 38 Ind. 492.

5. If the action is to recover possession of the real estate, a *counter claim* averring a purchase at a tax sale, possession thereof under the tax deed issued, the making of valuable improvements, and praying that the title be quieted, otherwise that a lien be declared in favor of the pleader for the taxes, interest and penalty, is good, 84 Ind. 147. See 71 Ind. 296; 82 Ind. 214.

6. In order to foreclose his lien, the *purchaser need not have* taken out a *deed*, 114 Ind. 84 (*contra*, 77 Ind. 280; 88 Ind. 159).

7. A mere *voluntary payment* of taxes will not create a lien, 75 Ind. 17. But one holding title under a sheriff's deed afterwards set aside, paying taxes while so holding the title, is not a volunteer, 104 Ind. 167.

8. There are only *three instances* in which the sale of land is so *void* as not to convey a lien: (1) Where the lands were not liable for taxation; (2) Where the taxes have been paid before the sale; and (3) where the description on the tax duplicate is so imperfect as to fail to identify the land, 110 Ind. 174; 111 Ind. 467; 114 Ind. 84.

9. The fact that the owner of the land had plenty of *personal property* subject to levy and sale for the delinquent taxes does not render the sale, so far as the lien is concerned, void, or even voidable, 114 Ind. 84; 110 Ind. 174; 111 Ind. 467; 72 Ia. 273; 81 Ind. 180.

10. *Suit* can not be brought by the purchaser or holder of the certificate of purchase until *two years after* the sale has expired; but if the owner of the land bring suit to cancel the certificate or quiet his title, the purchaser or tax-lien holder will be protected and allowed the proper rate of penalty and interest, 104 Ind. 75; 114 Ind. 84; 102 Ind. 385; 99 Ind. 352; 88 Ind. 159.

11. The *lien of the State* passes to the purchaser, even though the sale does not give the slightest ground for an absolute title, 114 Ind. 84; 81 Ind. 180; 104 Ind. 451; 102 Ind. 330; even in the case of a private sale, 98 Ind. 182; § 6488; or sale by a city or town, 124 Ind. 254.

12. The purchaser may enforce his lien even though the *deed* is *void upon its face*, 114 Ind. 84; 14 Pac. Rep. 256; 15 Kan. 290; 31 Kan. 139; 32 Kan. 580; 72 Ia. 273; 60 Miss. 376; 56 Miss. 718; 58 Miss. 628; 84 Mo. 569; 84 Ind. 147; 124 Ind. 254.

13. An *action* to enforce the lien is *barred* in fifteen years after the right of action accrues. The action accrues and statute *begins to run*, not from the date of the tax-deed, but at the time when the purchaser becomes entitled to his deed, and delay in obtaining such deed does not *extend* the *time*. All *taxes subsequently paid*, and the right of action therefor, *relate back* to the time when the purchaser became entitled to the deed, 95 Ind. 144; 87 Ind. 317; 98 Ind. 334. See 62 Ind. 145; 81 Ind. 491; 93 Ind. 256. The five years limitation under the act of 1872 applied only where the suit was to recover possession, 94 Ind. 573; and not to a suit to quiet title or partition, 121 Ind. 164. It was strictly construed, 85 Ind. 449.

14. If the owner of the land seeks to avoid the sale at any time within two years thereafter, then he must tender the amount the land sold for, with the amount of the penalty then accrued; and if refused, he may bring an action for the purpose of setting aside the sale, averring the fact of tender and bringing the money into court; but in that event he is *not liable for interest* under this section; he is liable only for the amount of the sale and the penalty up to the date of bringing the action, 102 Ind. 515. He must allege in his complaint that he brings the money into court, 124 Ind. 254; 114 Ind. 84; 26 N. E. Rep. 54.

15. If the sale took place under the law of 1872, and the action is brought two years after the sale, the *rate of interest* is twenty per cent. under the *act of 1883*, 102 Ind. 385; 108 Ind. 97. A purchaser in 1867 and 1871 bringing an action since 1883 to foreclose his lien can recover interest only at the rate of six per cent. per annum, as provided by the statute in force at the date of sale, 100 Ind. 45. The right to the rate of interest given by the law when the sale was made is not a vested right, and may be changed, 60 Ind. 573; 74 Ind. 51. See *note* 2.

16. The *complaint* to foreclose the lien should aver that the defendant is the *owner* of the land or has some interest therein, 71 Ind. 244; 81 Ind. 294. If the complaint show that the defendant owns the land, that it was subject to taxation, was listed and sold for taxes, and purchased by the plaintiff or his assignor, and the amount paid and when paid, it is sufficient, 81 Ind. 294. A person not a party to a foreclosure of a tax lien is not bound thereby, 26 N. E. Rep. 153. See *note* 20.

17. In an action to quiet title, an *answer* that the defendant foreclosed the land for taxes duly assessed upon it, and claims no other interest therein, is sufficient, 82 Ind. 214.

18. If the *sale* has been *set aside* before deed issued, the issuing of a deed thereafter will not create a lien, 75 Ind. 17.

19. On *appeal* it will be *presumed* that the court below rendered whatever judgment the facts warranted, unless the contrary expressly appears, 77 Ind. 221.

20. *Lien-holders* must *take notice* of an assessment for taxes, the lien created by it, and the manner of enforcing collection, and they are bound by the proceedings, whether made *parties* or not, and their only remedy is to *redeem* within a proper time. A sale or a decree of foreclosure of a lien for taxes passes the title to the purchaser as against judgment lien-holders. If one person claims title through a *judgment* forclosing an ordinary lien, and another through a judgment foreclosing a tax lien, the latter will have the superior title, 122 Ind. 99. See *note* 16.

Sec. 6498. Tax not invalid for want of form. 224. No general or specific tax authorized by the laws of this State, and which shall be assessed on any property in any township, city, or town within this State, by any officer authorized to make assessments, or which, if made by another person or may be adopted by such officer as his act, shall be held to be illegal or invalid for want of any matter of form in any proceeding not affecting the merits of the case, and which shall not prejudice the rights of the party assessed. And all taxes assessed upon any property in this State shall be presumed to be legally assessed until the contrary is affirmatively shown; and no sale of real estate for the non-payment of taxes thereon shall be rendered invalid by showing that any certificate, return, affidavit, or other paper required to be made and filed in any office is not found in any office where the same ought to be filed or found, but, until the contrary is proven, the presumption

shall be, in all cases, that such certificate, return, affidavit, or other paper was properly made, and filed in the proper office. (229.)

The *presumption* is that all taxes were legally assessed until the contrary is shown. It is presumed that they were placed upon the tax duplicate by the proper officer, 109 Ind. 10.

SEC. 6499. When county officers are liable for neglect. 225. Whenever the owner of any tract, lot, parcel, or piece of land is deprived of his title thereto, or to some portion thereof; or, by reason of any suit in relation thereto, is put to expense, damages, costs, or charges, by reason of the failure of the county treasurer to give proper credit for any taxes paid to him; or whenever any tract, parcel, or lot of land shall have been assessed to two different persons, and the entire tax shall have been paid by either of them, and the treasurer shall sell such land as delinquent on account of the non-payment, by the other party, of the taxes assessed against him thereon, the party damaged by such sale, or his legal representatives, may, in an action against the officer by whose act or omission such damages have been caused, or upon his official bond, recover a judgment for double the amount of all the damages, costs, and charges to which such owner may have been subjected in consequence of such failure or such dereliction of duty. (230.)

See § 6465.

ARTICLE 28—TREASURER'S SETTLEMENTS AND DEFAULTS.

SEC.		SEC.	
6500.	Settlements with county auditor.	6508.	Books and papers admissible testimony.
6501.	Payment to state treasurer.	6509.	Duties of sheriff as to collecting.
6502.	Payment to state treasurer.	6509*a*.	Dog fund.
6503.	Penalty for failure to pay.	6510.	Refunding by county to treasurer.
6504.	Mistakes, how corrected.	6511.	Refunding by State to treasurer.
6505.	Liability for not settling.	6512.	Provision applies to all county treasurers.
6506.	Not paying over.		
6507.	Stated account, *prima facie* evidence.		

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6500. Settlements with county auditor. 226. The county auditor and [county] treasurer shall attend at the office of said auditor, on the third Monday in April, annually; and the treasurer shall then and there make a [settlement] with the auditor for the amount of taxes for which such treasurer is to stand charged, as follows:

First. The auditor shall, in a column or columns for the purpose, opposite the name and description, on the right hand of the duplicate in the hands of the auditor and treasurer, extend a list of all such taxes as the treasurer shall have been unable to collect.

Second. The treasurer, under oath, to be administered by the auditor, shall certify in such duplicate to the correctness of such list, setting out in words and in figures the amount thereof.

Third. The treasurer shall immediately proceed to collect the same in the manner provided by law.

Fourth. After deducting the amount of taxes so returned delinquent, and the collection fees allowed the treasurer from the several taxes charged on the duplicate, in a just and ratable proportion, the treasurer shall be held liable for the balance.

Fifth. The auditor shall certify, in such manner as the auditor of state shall direct, the balance due for all state purposes, and the balance due for county or other local purposes; which certificate he shall deliver to the treasurer, who shall deliver the same to the auditor of state at the time he makes settlement with him.

The said treasurer shall, also, on the first Monday in November, make settlement with the county auditor for the amount of all the tax[es] and delinquent tax[es] for which said treasurer is to stand charged; said settlement, in all respects, to be made and certified in such manner as the auditor of state shall direct; and it shall be the duty of the county auditor to forward a certified copy of such settlement, forthwith, to the auditor of state. (231.)

1. *City* settlements, § 3093; *town*, § 3322. The county treasurer annually settles with the board of county commissioners, R. S. 1881, § 5925.

2. Referred to and commented upon, 109 Ind. p. 17. A refusal, in a suit on the treasurer's bond, to allow certain settlements between him and the county auditor to go in *evidence* is not error, if such settlements could not have changed the result, 99 Ind. 218. See 70 Ind. 481.

3. In this settlement the county board of commissioners have no authority whatever to interfere, 111 Ind. p. 176. See 93 Ind. 311.

4. Settlement sheets, signed by the treasurer and auditor, reciting that they contain "a true and correct statement of delinquent taxes collected by the treasurer" for a length of time, "as reported by the treasurer to the auditor of said county, and the amount payable into the state treasury," are admissible in *evidence* in an action on the bond of the treasurer, 62 Ind. 183.

5. These *settlements* may be *explained* by parol evidence as to the manner, and under what circumstances, were made, 62 Ind. 183. They are only *prima facie* correct, 93 Ind. 311 (explaining 17 Ind. 437.); even when those made under the law of 1872, which declared that they should be conclusive, the act of 1881 changing their effect in that respect, 85 Ind. 260. See § 6507.

6. If there has been a *mistake*, whereby the treasurer is overcharged, he can not recover back the excess from the county after *six years* from the date of over-payment, 95 Ind. 323; 82 Ind. 172.

7. A *copy* of this settlement certified to by the county auditor is evidence of the facts therein recited, 22 Ind. 241. *Note* 4. See § 6507.

SEC. 6501. Payment to state treasurer. 227. Each county treasurer shall, on or before the fifteenth day of May, in each year, pay over to the state treasurer all the moneys found due for all state purposes, according to the certificate of settlement with the auditor of his county, and shall take a receipt or receipts for the money so paid; which he shall deposit with the auditor of state, who shall give him a quietus. (232.)

Manner of paying, R. S. 1881, § 5637.

SEC. 6502. Payment to state treasurer. 228. Each county treasurer shall, also, on or before the first day of January of each year, pay over to the state treasurer all the moneys found due for state

revenue, school tax, and all other state purposes, according to the certificate of settlement with the auditor of his county, and shall take a proper receipt or receipts from the treasury for the moneys so paid; which he shall deposit with the auditor of state, who shall give him a quietus. (233.)

Sec. 6503. Penalty for failure to pay. 229. If any county treasurer shall fail to pay into the state treasury the amount due to the State on his account for the state and other taxes, before or at the time required by this act, he shall forfeit and pay to the State of Indiana a penalty of fifteen per cent. on the amount due; which shall, together with the amount due the State, be recovered in an action of debt, in the name of the State of Indiana, against such dilatory treasurer. And it shall be the imperative duty of the auditor of state to notify, at once, the prosecuting attorney of the proper county of such default; and such attorney shall bring suit, immediately, against such treasurer; and such penalty, when recovered, shall be paid into the state treasury. For his services in collecting such penalty, such prosecuting attorney shall be allowed a docket-fee of ten dollars, to be taxed as costs against such defaulting officer. In no case shall the prosecuting attorney fail to bring such suit, unless satisfactory evidence from the county board is presented to him, showing, by official action taken by such board, lawful cause why the treasurer could not pay over, in part or in whole, the amount due on such treasurer's account with the State. (234.)

A prosecuting attorney who obtains judgment in behalf of a county against a defaulting treasurer for public money, is not entitled to a lien upon the judgment to secure his statutory fee, 125 Ind. 219.

Sec. 6504. Mistakes, how corrected. 230. If any county treasurer, in making settlement with the county auditor, shall stand charged, by mistake, with any tax remaining unpaid, and shall not receive a credit therefor in such settlement, such treasurer may collect such tax, for his own use, at any time after such settlement, either by distress and sale, as hereinbefore provided, or by an action of debt in his own name before any justice of the peace or court having jurisdiction. (235.)

1. A lien can not be declared upon the land for the taxes due under this section, for the action is a personal one, 17 Ind. 308; 49 *id.* 285, but see 21 Ind. 74.

2. In an action to recover the amount of taxes with which he is charged, the treasurer must produce the tax duplicate or a certified copy, to prove that the land or property was taxed, 17 Ind. 308; 8 B. 350.

3. If the county treasurer has not been allowed his proper fees, his *claim* is *barred* after *six years*, 82 Ind. 172.

Sec. 6505. Liability for not settling. 231. If any county treasurer shall refuse or neglect to make return or settlement with the auditor of his county, as in this act required, he and his sureties

shall be held liable to pay the full amount of the taxes charged on the duplicate, respecting which he so refuses or negleets to make return or settlement, together with interest from the time when such return or settlement should have been made, and ten per centum damages; and it shall be the duty of the county auditor to notify, immediately, the prosecuting attorney of such failure or refusal, who shall bring suit, at once, upon such treasurer's official bond. (236.)

SEC. 6506. Not paying over. 232. The county treasurer shall pay over all the revenues collected for county, road, and other purposes, and make settlements therefor, at the times and in the manner by this act required; and upon failure or refusal to do so, he and his sureties on his official bond shall be held liable to pay the full amount which he [should] shall have paid over, together with interest and ten per centum damages. And such suit, if for state revenue, shall be brought by the attorney-general, in the name of the State of Indiana, on [the] relation of the auditor of state, upon the written request of the auditor of state; and if for county, road, or [for] any other purpose, it shall be brought by the prosecuing attorney, in the name of the State of Indiana, or [on the] relation of the county auditor, upon the written request of the county auditor or upon the order of the board of county commissioners. And in case of recovery upon such bond, such attorney-general or prosecuting attorney shall be entitled to a compensation of five per centum upon all sums collected, after judgment for the full amount, interest, and ten per centum damages has been obtained, and also a docket-fee of ten dollars, to be taxed as costs against the judgment-defendants. (237.)

1. The prosecuting attorney is entitled to fees from the county only on the amount the county receives, 125 Ind. 270. The relator may be the county auditor, 81 Ind. 137; 85 Ind. 260; 49 Ind. 51, 47, 42. R. S. 1881, § 5904.

2. This section does not apply to an action against a treasurer individually where the suit is brought by reason of a mistake on the part of the county whereby he had been given credit, on final settlement, for county orders which had previously been redeemed, and for which he had been given full credit in other settlements, 108 Ind. 449.

SEC. 6507. Stated account, prima facie evidence. 233. The stated account of the county treasurer against whom suit is brought, certified by the auditor of state as truly transcribed from the account-current against such treasurer on the books of said auditor's office, authenticated by the state seal, shall be *prima facie* evidence against such treasurer and his sureties. (238.)

See § 6500, *note* 5.

SEC. 6508. Books and papers admissible testimony. 234. In all suits brought against any county treasurer and his sureties, the books and papers belonging to the treasurer's office, and all books and papers belonging to the auditor's office shall, when proved by the oral testimony of the auditor, be admissible testimony. (239.)

Sec. 6509. Duties of sheriff as to collecting. 235. The sheriff, or other officer who shall collect any money from any delinquent county treasurer or his sureties, shall, within ten days after the assessment and the collection thereof, pay into the county treasury such portion thereof as shall belong to the county, and, within thirty days after such collection, shall pay into the state treasury the portion belonging to the State, retaining the same traveling fees allowed by law to county treasurers; or he shall pay the same over in such other manner as the auditor of state may direct. (240.)

Sec. 6509*a*. Dog fund. 236. The revenue received from the tax on dogs in each township shall be set apart by the county auditor at such annual settlement, and the same shall be paid over by the county treasurer to the proper township trustee. The sums so collected and received in each township are hereby declared to be a fund for the payment of damages sustained by the owners of sheep maimed or killed by dogs within such township; and each township trustee is directed and required to hold the same for such purposes: *Provided, however,* That when it shall so happen on the first Monday of March in each year, in any township, that the said fund shall accumulate to an amount exceeding fifty dollars over and above orders drawn against the same, then the surplus over said sum of fifty dollars shall be expended by such trustee for the use of the school revenue of the township.

See § 6329*h*, *notes*. Effect of act of 1881 on distribution, see 90 Ind. 495.

Sec. 6510. Refunding by county to treasurer. 237. Whenever it shall appear to the board doing county business in any of the counties of this State, by clear and sufficient proof, that, by reason of erroneous charges in the tax duplicate, or from any other cause, the treasurer of such county has paid and accounted to said board for more money than was justly due from him on account of county revenue, said board doing county business shall direct the auditor to credit said treasurer with the sum or sums thus improperly paid, and order the same to be refunded from the county treasury. (242.)

Without a statute authorizing a refunding by the county of illegal taxes none can be refunded, 36 Ind. 175.

Sec. 6511. Refunding by State to treasurer. 238. Whenever similar improper or erroneous payments have been made by any county treasurer to the state treasurer, the board doing county business shall direct the auditor to certify said improper or erroneous payments to the auditor of state, under his seal of office, who shall audit and allow the same as a claim against the state treasurer, and the [said] treasurer shall pay the same [out] of any moneys not otherwise appropriated. (243.)

No tax can be refunded except such as is authorized by statute, 36 Ind. 175.

In a proper case the auditor of state may be compelled to refund by a mandate, 53 Ind. 60; 90 Ind. 16. The certificate is *prima facie* correct, and can not be impeached except for fraud in its procurement or issue, or mistake therein, 90 Ind. 16.

SEC. 6512. Provision applies to all county treasurers. 239. The provisions of the preceding sections shall extend to persons who have been, as well as to those who are now and shall hereafter be, county treasurers. (244.)

ARTICLE 29—GENERAL PROVISIONS.

SEC.
6513. Annual review of delinquents.
6514. Delay not to vitiate.
6515. Forms and instructions.
6516. Uncollected tax, how added.
6517. Uniform system of book-keeping.
6518. Copies of act—Distribution.
6519. School land assessments legalized.
6520. When treasurer not to refund.
6520*a*. Compromise of taxes.
6520*b*. Certificate of compromise.
6520*c*. Three years' delinquency—Compromise.
6520*d*. Certificate of redemption.
6520*e*. Limit of compromise—Cities and towns.
6521. Former liens and penalties.
6521*a*. Cities governed by general tax law—Office of city assessor and board of equalization abolished.
6521*b*. False swearing.
6521*c*. False assessment.
6521*d*. Officer failing to perform his duty.
6521*e*. Forms.
6521*f*. Laws repealed.
6521*g*. Emergency clause.

[1891, p. 199. Approved and in force March 6, 1891.]

SEC. 6513. Annual review of delinquents. 240. Annually, in the month of November, before the delinquencies of a former year or years are carried upon the current year's duplicate, it shall be the duty of the county auditor and [county] treasurer to review and carefully examine the list of delinquencies; [and] all such delinquencies as, by reason of removal from the State, leaving no property, or dying, leaving no property, and all delinquencies which, in the judgment of said auditor and treasurer, from any other cause, there is no reasonable probability of being collected, shall be omitted from the current year's duplicate. (245.)

SEC. 6514. Delay not to vitiate. 241. Any failure to deliver the treasurer's or assessor's books within the time required by this act, or to make any official certificate within the time required by this act, shall in no way affect the validity of the assessment and levy or collection of taxes; but in case of such failure, the assessment and levy of taxes and the proceedings to collect taxes shall be held to be as valid and buildings [binding] as if said books had been delivered at or within the time required by law. (246.)

SEC. 6515. Forms and instructions. 242. It shall be the duty of the auditor of state to make out and forward to each county auditor, from time to time, for the use of such auditor and other officers, suitable forms and instructions; and all such instructions shall be strictly complied with by the officers, in the performance of their respective duties. He shall give his opinion and advice,

on all questions of doubt, as to the true intent and meaning of the provisions of this act. (247.)

Sec. 6516. Uncollected tax, how added. 243. If the tax on any property liable to taxation is prevented from being collected for any year or years by reason of any erroneous proceedings or other cause, or has not heretofore been assessed, the same shall be assessed as in this act provided, and the amount of such tax which such property should have paid shall be added to the tax on such property for the next succeeding year. (248.)

64 Ind. 360.

Sec. 6517. Uniform system of bookkeeping. 244. It shall be the duty of the auditor of state to order and to enforce a correct and, as far as practicable, uniform system of bookkeeping by county treasurers and auditors, so as to afford a suitable check upon their mutual action, and insure the thorough supervision and safety of state, county, and other funds. (249.)

Sec. 6518. Copies of act—Distribution. 245. The auditor of state shall, from time to time, whenever he shall find it necessary, cause to be printed, at the expense of the State, a sufficient number of copies of this act to furnish one copy to each township assessor, county assessor, treasurer, auditor, and commissioner within this State, and shall transmit to each county auditor a sufficient number for his county. Every county auditor receiving such copies shall immediately distribute the same to the persons entitled thereto. The auditor of state shall also furnish the several township assessors, county assessors, auditors and treasurers with all such forms and instructions as he may wish them to pursue in the performance of the duties required by this act. And in preparing such forms for the returns to be made by county auditors, and for the settlement sheets of county treasurers, he shall require them to separately show the amount collected and paid in on account of poll-tax. (250.)

Sec. 6519. School land assessments legalized. 246. In all cases where school lands have been sold and a certificate has been issued to the purchaser, or entered or recorded in the proper office, or otherwise, and the purchaser has entered into possession, and paid a part or the whole of the purchase-money, or could have entered into occupancy, such lands shall be deemed and held as having been sold, so as to make them liable to taxation, within the meaning of the law, as fully and completely as they would have been had a deed been made and delivered, and the fee had passed to the purchaser; and all appraisements of lands so sold, all assessments of the same for taxes, and all levies and collections of taxes thereon, heretofore made, shall be and are hereby legalized and declared to be lawful and valid, and shall in nowise be subject to

question by reason of such sale not having been consummated by the execution and delivery of [a] deed. But whenever any treasurer fails to collect any delinquent taxes for any year, and the same is carried over to the next year's duplicate, together with all penalties and interest, such treasurer shall not be entitled to any fee for collecting the delinquent part of said duplicate, more than he is entitled to by law for collecting the duplicate of the current year. (251.)

See § 4364. The closing sentence in this section is constitutional, and by implication repeals § 5928, R. S. 1881, 84 Ind. 14. Formerly the lands described in this section were not taxable, 49 Ind. 272; but now it is, 53 Ind. 60; 57 Ind. 96.

Sec. 6520. When treasurer not to refund. 247. No treasurer shall refund any taxes paid; nor shall any board of county commissioners authorize the refunding or re-payment of any taxes so levied or collected; nor shall any action be commenced or maintained in any court in this State; nor shall any court have jurisdiction [to entertain any action brought] to recover taxes so levied and collected, as being illegal, by reason of such lands not being sold in any case contemplated in the preceding section. (252.)

This section took away the right to compel a refunding of taxes on school lands paid prior to the conveyance, 58 Ind. 244; 81 Ind. 186.

Sec. 6520*a*. Compromise of taxes. 248. Whenever, at any time before the first day of April, 1892, it shall appear to the joint satisfaction of the county auditor and the county treasurer and the county assessor, that any tract of land or city, town or village lot heretofore assessed with state and county taxes, and heretofore unsold for taxes, is not worth the amount of such taxes, interest and costs, they shall jointly proceed to appraise such tract of land or lot at its true cash value, and thereupon it shall be lawful for said auditor, treasurer and assessor to compromise said taxes assessed up to the first day of April, 1891, with the owner of such tract or lot, for such sum in cash, as may seem advantageous to the county and State, and such proposed compromise, shall be at once reported by the county auditor to the auditor of state, and if approved by him, under his hand and seal of office, and not otherwise, the same shall be valid and effectual, if the amount thereof is paid to the county treasurer before the first day of April, 1892. (253.)

Sec. 6520*b*. Certificate of compromise. 249. As soon as such payment is made, a certificate of satisfaction and redemption shall be issued by the county treasurer, attested by the signature and seal of the county auditor, and delivered to such owner, which certificate shall be valid and effectual to release said land or lot from the lien of all state and county taxes, penalties and costs due thereon up to the first day of April, 1891, and [the] sum so paid in compromise shall be distributed to the State and county in the propor-

tion that the amount received bears to the whole amount assessed and charged against such tract or lot. (254.)

Sec. 6520*c*. Three years' delinquency—Compromise. 250. Whenever, before April 1, 1892, the owner of any tract of land, or city, town or village lot, heretofore assessed with state and county taxes, and unsold for taxes, which have been continuously delinquent for at least three years or more before the taking effect of this act, offers to the county treasurer to pay in cash the full amount of such taxes, with interest thereon at the rate of six per cent. per annum, from the day each installment of tax became due and payable, without the penalty, costs and charges thereon, and it appears to the joint satisfaction of the county auditor, treasurer and assessor, that it will be more advantageous to the county and State [to] accept such offer, than to proceed against such lands or lots, they shall at once jointly report the offer with their opinion, to the auditor of state, and if he notifies the county auditor, under his hand and seal of office, that he deems it advantageous to the county and State to accept such offer, it shall thereupon be the duty of the county treasurer to accept such offer and to receive the amount of such taxes and interest without the penalty, costs and charges. (255.)

Sec. 6520*d*. Certificate of redemption. 251. As soon as such payment is made the certificate of satisfaction and redemption shall be issued by the county treasurer, attested by the signature and seal of the county auditor, and delivered to such owner, which certificate shall be valid and effectual to release said land or lot from the lien of all state and county taxes, penalties and costs due thereon up to the first day of April, 1891, and such sum so paid shall be distributed to the State and county in proportion that the amount received bears to the whole amount assessed and charged against such tract or lot. (256.)

Sec. 6520*e*. Limit of compromise—Cities and towns. 252. The privilege to compromise and pay, permitted in the foregoing section, shall not extend beyond the first day of April, 1892, and the provisions of said sections shall apply to municipal taxes in cities and incorporated towns, and in cities the treasurer, clerk and chairman of the finance committee shall perform the same duties as are now enjoined in said sections, and the mayor shall perform the duties required of auditor of state, and in incorporated towns, the board of trustees shall have full power to perform the duties in said sections enjoined upon said officers as aforesaid. (257.)

Sec. 6521. Former liens and penalties. 253. All liens for taxes, and all penalties, and any right to redeem from any tax-sales, accrued under former laws, and existing at the time of the passage of this act, are hereby continued in force, and may be enforced under the provisions of this act; and all suits and proceedings

now pending for collection of taxes, under former and existing laws, shall be continued to a final termination the same as if this act had not been passed. (258.)

1. The *repeal* of a statute under which taxes are levied puts an end to the right to collect them, unless the repealing statute contains a provision preserving the taxes and the right to collect them. A lien accrued under the act of 1872 is continued and preserved, and may be enforced under the provisions of that act. The remedy of the holder of an invalid tax title, for the enforcement of rights acquired under former statutes, is that given by the act of 1872, 77 Ind. 316; 96 Ind. 291; 109 Ind. 10.

2. There is now no right of redemption of *personal property* sold, the statute authorizing it having been repealed, 104 Ind. 459.

Sec. 6521*a*. Cities governed by general tax law—Office of city assessor and board of equalization abolished. 254. Cities shall be governed by the provisions of this law, in regard to the matters embraced therein, so far as the same are applicable, and the duties required by the terms of this act to be done by the county officers, shall be performed by the corresponding officers of each city in regard to the assessment and collection of taxes, and all matters pertaining thereto: *Provided*, That all city taxes shall be paid on or before the third Monday in April of each year, unless the common council shall, by ordinance or resolution, determine otherwise, as provided by law: *And, provided further*, That the office of city assessor and the city board of equalization are hereby abolished and the assessment of real and personal property, as made and returned by the township assessor, shall serve as the assessment for city purposes, and the proper city officers shall have access to the assessor's books and to the tax duplicates in the county auditor's office, for the purpose of transcribing therefrom a list of the property assessed, as the same shall have been equalized by the board of review and the state board of tax commissioners. (259.)

See § 3160.

Sec. 6521*b*. False swearing. 255. Any person who, under any of the proceedings required or permitted by this act, shall willfully swear falsely, shall be guilty of perjury and subject to all its penalties.

Sec. 6521*c*. False assessment. 256. Any assessor or member of a board of review, or of a board of tax commissioners, who shall willfully assess any property at more or less that [than] what he believes to be its true cash value, as the same is defined in this act, shall be guilty of a misdemeanor, and on conviction thereof he shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not more than one year, or both, in the discretion of the court.

Sec. 6521*d*. Officer failing to perform his duty. 257. Any officer who shall willfully neglect or refuse to perform any of the duties imposed on him by this act, when no other provision is made herein, be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or both, in the discretion of the court, and shall be liable to any person injured thereby to the full extent of the damage sustained.

Sec. 6521*e*. Forms. 258. The state board of tax commissioners is hereby authorized to prepare for the use of assessors a more complete and perfect form of "schedule of property" than that set out in section 53 of this act, with a view of securing a full assessment of all the property of the State; and all county auditors are directed to use such form, in preparing blanks for the use of assessors. Said board is also authorized to prepare in like manner a new form of tax receipt for the use of county treasurers, which form of receipt, when so prepared, shall be used by all county treasurers: *Provided*, That for the assessment and collection of taxes for the year 1891, the forms heretofore in use may be continued as far as practicable, subject, however, to all provisions of this act.

Sec. 6521*f*. Laws repealed. 259. All laws and parts of laws within the purview of this act, including "an act to render uniform the assessments of personal property in the several townships of the different counties," approved March 8, 1889, are hereby repealed. (261.)

Sec. 6521*g*. Emergency clause. 260. Inasmuch as an emergency exists, this act shall take effect and be in force from and after its passage. (262.)

APPENDIX.

It has been deemed advisable, owing to the size of this volume, to omit several acts of the legislature which have only a local application, and which are enumerated below, viz.:

I.

An act concerning the incorporation and government of cities having more than 100,000 population, approved March 6, 1891 (Acts 1891, pp. 137 to 197). This law now applies only to the city of Indianapolis; and is often referred to as the "Charter" of that city.

II.

An act providing for a board of metropolitan police and fire department in all cities of 50,000 or more and less than 100,000 inhabitants, in force March 10, 1891 (Acts 1891, p. 467). This act now applies only to the city of Evansville.

III.

An act to establish an efficient board of public works in all cities containing more than 50,000 and less than 100,000 inhabitants, in force March 10, 1891 (Acts 1891, p. 474). This act now applies only to the city of Evansville.

IV.

An act concerning taxation for city and school purposes in cities containing a population of over 70,000 inhabitants, approved February 21, 1885 (Acts 1885, p. 13; El. Sup. §§ 2159 to 2183). This act now applies only to the city of Indianapolis.

V.

An act to establish a board of public works in all cities of 50,000 inhabitants or more, passed March 8, 1889 (Acts 1889, p. 247; El. Sup. §§ 759 to 783). This act is unconstitutional. State *ex rel.* Jameson *vs.* Denny, 118 Ind. 382.

VI.

An act providing for a board of metropolitan police and fire departments in all cities of 29,000 inhabitants and over, passed March 7, 1889 (Acts 1889, p. 222; El. Sup. §§ 721 to 737). This act is unconstitutional. State *ex rel.* Holt *vs.*

Denny, 118 Ind. 449; City of Evansville *vs.* State *ex rel.* Blend, 118 Ind. 426. This left the act of March 5, 1883, in force. (See *ante* §§ 3221*a* to 3221*o*; Acts 1883, p. 89; El. Sup. §§ 705 to 720.) State *ex rel.* Law *vs.* Blend, 121 Ind. 514.

VII.

The charter of the city of Evansville, approved January 27, 1847 (Local Acts 1847, p. 3), and all amendments thereto.

VIII.

The charter of the town of Vernon, approved January 22, 1851, a public act (Local Laws 1851, pp. 3 to 10), and all amendments thereto.

INDEX.

INDEX.

Abandonment SEC.
An office may be abandoned. n. 2. 156

Abatement
Plea of abatement necessary before mayor ..... n. 5, 3066

Abutter
Damages to property by grading street .....n. 22, 66
Market places can not be improved at his expense cl. 33, n. 4, 3106
Right to street.....n. 6, 3161

Accoucher
Reports to county board of health 4995

Accounts
Clerk of city keeps 3069

Acknowledgments
Mayor may take 3062

Action on city ordinance
Enforcement of ordinance. n. 4, 3066
Judgment against a railroad... 3065
city 3065
Name of city brought in..... 3066
Organization of city need not aver..... 3064
Penalties to recover, how brought 3066
Publication of ordinance need not aver 3064
affidavit denying 3064
Suit, see.
Survival of action .....n. 35, 3161

Action, survival
When action survives....n. 35, 3161

Action on warrant
Suit may be brought upon a city warrant.....n. 2, 3069

Additions
Town vacating..... 3383

Administrators SEC.
City taxing..... 3264
Duty to report decedent's property, see Taxation.
Town taxing..... 3264

Adverse possession
What constitutes, and effect on street .....cl. 18, n. 8, 3106

Advertising
In cities of 16,000 .....3100*a*
10,000 .....3100*d*
Notices, see.

Affidavit
Denying publication of city ordinance..... 3064
Election for incorporating town as a city, showing the result..... 3035
Mayor may certify to..... 3062
Non-publication of ordinance. 3064
Recovery of penalty..... 3066
Sufficiency before mayor to recover a penalty..... 3066

Agent
Judgment against agent of railroad..... 3065
Service of process upon agent of railroad 3065

Agricultural lands
Annexation to city or town, n. 9, 3197
Taxation, right to exemption from city or town repealed, n. 1, 3261

Aldermen
Elected in large cities 3051
Expelling..... 3053
Large cities have..... 3053
Meetings 3058
Pay 3059
President of board, how elected, 3057
pro tempore 3057
signs ordinances..... 3057
Term..... 3053
Vacancy in office 3053

Alleys SEC.
Cleaning.....cl. 10, 3106
Highways are.....n. 5, 3161
Improvement in city.....3161, 3162
town.....cl. 9, 3333
Obstruction in town.....cl. 6, 3333
Opening in city.....3166 to 3194
See Streets, Opening in City.
Opening in town..... 3367
Vacation, city may.....3166 to 3194
See Streets in City, Vacation.
Vacation, laws concerning, must be general..... 118
towns may..... 3367
See Streets in Town, Vacation.

Amotion
Procedure for city....n. 1 to 7, 3101

Amusements
License for may be exacted by by city.....cl. 15, 3106

Animals
Cattle at large may be excluded from city.....cl. 35, n. 2, 3106
Cruelty to may be prohibited, n. 4, 3155
Dead, removal, cl. 22, n. 2, and cl. 35, n. 2, 3106; 3226
Dogs, taxation in city..... 3156
town.....cl. 15, 3333
Exhibition in street..cl. 15, n. 3, 3106
Failure to confine....cl. 3, n. 1, 3106
Fowls, impounding, cls. 21 and 27, 3106
running at large.....cl. 21, 3106
Frightening horses, cl. 18, n. 9, 3106
Hogs excluded from city or town.....cl. 35, n. 2, 3106
Horses, impounding, cls. 21, 27, 3106
speed of.....cls. 17, 29, 3106
Impounding by city.....cl. 21, 3106
Running at large, city may prohibit.....cl. 21, 3106; n. 4, 3155
town may prohibit.....cl. 5, 3333
Swine, impounding..cls. 21, 27, 3106
Unlawfully at large, city or town not liable for damage committed by...cl. 21, n. 1, 3106

Annexation
Acquiescence in proceedings by land-owner, effect.....n. 8, 3196
Adjoining lots.....3195; 3197
Agreement between city and town for annexation of town..... 3234
See Union of City and Town.
Agricultural lands may be annexed.....n. 9, 3197
Amalgamation of city and town, 3233
Appeal from proceedings, n. 5, 3197; 3243

Annexation (*cont'd*) SEC.
effect.....3246
trial upon.....3245
Approval of plat.....3196
Auditor's duty.....3244
Bond for appeal must be filed, 3243
Collateral attack upon proceedings.....n. 1, 3197
Common law authorizes annexation.....n. 1, 3196
Conclusiveness of order...n. 4, 3196
Consent of land-owner..... 3196
resolution upon such consent, 3196
Consolidation of city and town, 3238
See Union of City and Town.
Constitutional, statute authorizing is valid.....n. 1, 3196
Contiguous, territory annexed must be....n. 2, 3196; n. 2, 3195
with consent of owner..... 3196
what territory is such...n. 5, 3196
Copy of councils' resolution recorded..... 3196
County board must act upon petition.....n. 1, 3197
can not act at special session, n. 4, 3197
Disannexation of territory.....3247
Eminent domain, not an exercise of power under...n. 7, 3195
Injunction to prevent, when lies, n. 2, 3, 3195
Legalizing of annexation, effect.....n. 1, 3195
Map or plat..... 3196
Notice of proceedings, before board of county commissioners..... 3196
effect.....n. 7, 3196
proof of publication..... 3196
Order-book entry..... 3197
Petition, clerk's certificate to.. 3196
form..... 3196
by whom presented.....n. 5, 3196
sufficiency.....n. 5, 6, 3196
Plat, approval..... 3196
who makes.....n. 8, 3195
Platted, territory annexed, when must be.....n. 5, 3195
Quo warranto does not lie.n. 4, 3195
Reasons for annexation, statement in petition.....n. 3, 3196
Record of proceedings..... 3197
Resolution of annexation by council..... 3195
to present petition to county board..... 3196
School-house belonging to township, effect upon.....n. 6, 3197
Special session, board can not act during.....n. 4, 3197
Tax, enjoining collection when annexation illegal.....n. 8, 3156

Annexation (*cont'd*) SEC.
recovering back.....n. 8, 3197
platted land, taxing .....n. 7, 3197
Town can not be annexed in whole or in part .....n. 6, 3195
Township, effect upon its school house annexed.....n. 6, 3197
Trial on appeal..... 3245
Unplatted territory, council can not annex.....n. 3, 3195
county board annexes, n. 4, 3195; 3196
procedure..... 3197

Annexation by town
Appeal from proceedings 3243
effect..... 3246
transcript..... 3244
trial of..... 3245
Collateral attack on proceedings ..... n. 5, 3389
Constitutionality of statute, n. 1, 3389
Contiguous territory, what is n. 1, 3388
effect of annexation, order upon .....n. 5, 3389
Notice of pendency of proceedings, sufficiency ....n. 3, 5, 3389
Order extending boundaries of town 3388
Out-lots 3388
Petition 3388; 3389
Plat filed with recorder..... 3388
Powers of county board ...n. 4, 3389
Presumptions in favor of legality of proceedings.....n. 4, 3389
Reasons assigned for annexation.....n. 2, 3389
Resolution, copy of filed with recorder 3388
Trustee's duty when petition presented..... 3389
Unplatted lands..... 3389

Annual settlement
City treasurer and clerk make, 3093

Appeal
Annexation proceedings, lies to circuit court 3243
Bond in annexation proceedings..... 3246
effect..... 3243
Bond in penal action 3067
survey 3073*a*
City attorney may take in penal actions.....n. 2, 3078
Penal action, appeal lies to circuit court ..... n. 9, 3066
supreme court.....n. 13, 3066
Survey 3073*a*
Trial on in annexation proceedings 3245

Appropriations SEC.
In large cities must originate in council..... 3055
Ordinance for..... 3105
When can not be made in city of 16,000..... 3124

Arbitration
City may submit to an arbitration ..... n. 20, 3106

Arms
Bond to secure arms..... 3227
Distribution 3227
Governor ditributes to city or town 3228
Loan of secured by bond, n. 5, 3155
Resolution to secure arms 3227

Arrest
Action for penalty commenced by arrest..... 3066
Aiding officer to make n. 8, 3076; 3076*a*
Breaking doors.....n. 10, 3076
Chief of fire department may make..... 3201
Citizens must aid in making..3076*a*
City officers may be empowered to make.....cl. 29, 3106
Confining offender.....n. 17, 3076
Conservators of the peace, who are..... 175
Councilmen may be empowered to make ..... cl. 29, 3106
Custody, when person in, may be arrested by another officer.....n. 23, 3076
Definition.....n. 2, 3076
Detaining prisoner .....n. 16, 3076
Doors, breaking.....n. 10, 3076
Electors during election can not be, on civil process.... 93
Escape.....n. 18, 3076
Extra-territorial illegal, . n. 19, 3076
Felon, who may arrest ....n. 4, 3076
Felony, what is.....n. 10, 3076
Female can not be required to aid in making .....n. 8, 3076
Fleeing .....n. 11, 3076
Force may be used to make, n. 9, 19, 3076
Fugitive..... 3076
Good cause for, what is..n. 12, 3076
Governor's proclamation authorizes officer to make, n. 12, 3076
Hand-cuffs .....n. 5, 3076
How made .....n. 2, 3076
Immoderate riding or driving, cl. 17, n. 1, 3106
Injunction to prevent ....n. 21, 3076
Jailer receiving prisoner, n. 17, 3076
Killing felon ..... n. 11, 20, 3076

Arrest (*cont'd*) SEC.
Magistrate, should be taken before....n. 16, 3076
Manner of making.....n. 2, 3076
Market master may make, cl. 29, 3106
Marshal of town may make, n. 1, 2, 3327
of city may make..... notes, 3075
Mayor may order ..... n. 6, 3076
should be taken before, n. 16, 3076
Metropolitan police may make, 3221*f*
Mittimus..... 3076*b*
Name unknown ....n. 7, 3076
in warrant .....n. 7, 3076
Notice of intention to make, n. 2, 3076
On view .....n. 12, 3076
Ordinance violated, without warrant.....n. 13, 3076
Posse comitatus .....n. 8, 3076
Powers of city marshal to make, notes. 3075
Reasonable ground for...n. 12, 3076
Receipt for offender 3076*b*
Releasing prisoner .....n. 16, 3076
Rescuing prisoner,.....n. 4, 3155
Resisting.....n. 5, 9, 19, 3076
Searching prisoner .....n. 15, 3076
Self-defense .....n. 20, 3076
Shooting.....n. 20. 3076
Suspicion .....n. 12, 3076
Taking offender before magistrate .....n. 16, 3076
View, arrest upon ..... n. 12, 3076
Violence.....n. 5, 3076
Warrant must be in due form, n. 7, 3076
not necessary in felonies, n. 4, 3076
sent to another county..n. 4, 3076
What is not an arrest ....n. 22, 3076

Artesian wells
City may dig .....cl. 26, n. 3, 3106

Assault and battery
Pushing ..... n. 5, 3155

Ashes
Removal in a city .. cl. 10, n. 1, 3106
town .....cl. 3, 3333

Assessor (city)
Abolition of office in city and town.....3160; 3262; 6521*a*
Appointment of, when 3071
city .....n. 1, 3, 3071
Assessments 3071
Assistants by 3071
Board of equalization, belongs to..... 3156
Bond..... 3095
Deputy.....3043, 3071
Duties concerning loans..... 3118
real and personal property, 3071, 3072
Election for city..... 3043

Assessor (city) (*cont'd*) SEC.
Improvements destroyed, duty. 3072
Member of board of equalization (now abolished)..... 3157
Oath of office 3095
Realty assessed, when 3072
Term in city..... 3043
Vacancies 3050, 3071
See Taxation.

Assessor (town)
Abolished 3262

Assessment
Lien in street improvement .. 3175
See Street Improvement.

Association
To incorporate a town..... 3493

Attorney for city
Appeal, power to take for city, n. 2, 3078
Appointment 3043
Bond and oath 3095
Draws all city papers and ordinances 3078
Duties..... 3078
Duty in street opening proceedings.....3182, 3191
Election in large cities..... 3054
term 3054
Employment.....n. 13, 3106
Fees .....n. 1, 2, 5, 3078
General duty 3078, 3182
Notified of appeal in street opening proceedings..... 3180
Oath 3095
Obstructions in street, brings action to remove 3191
Pay .....n. 1, 2, 3078
Prosecutes and defends actions for the city 3078
Removal .....n. 1, 3078; n. 6, 3043
Term of 3043

Attorney-general
Examines mayor's dockets, n. 9, 3062

Auction
Auctioneer not an agent of the city.....cl. 38, n. 1, 3106
Defined .....cl. 38, n. 1, 3106
License from city .....cl. 38, 3106
town .....cl. 7, 3333

Auditor (city)
Duties 3043, 3087, 3123
Election of 3043

Auditor of county
Duty in annexation proceedings 3244
Trustee of county library 3784
See Taxation.

Ayes and noes SEC.
Called on adoption of ordinance 3099
Record of in large cities 3058

Bail
Bond 3066
Money in lieu of can not be taken .....n. 10, 3062

Ballots
Kind for incorporating cities.. 3035
Must be used in elections 94
See Elections.

Ballot-box
Town procures for incorporating a city 3034
See Elections.

Banks
City may tax 3156
Library companies may not engage in banking..... 3797
National banks may be taxed, n. 5, 3254
Stock, appraisement..... 3260
assessment 3257
cashier of bank pays tax upon stock 3258
collection of tax due upon stock 3258
constitutionality of law assessing .....n. 6, 3254
county auditor furnishes statement to city 3255
deduction of taxes upon from dividends 3258
deduction of indebtedness from value of stock....n. 7, 3254
dividends liable for taxes due upon stock 3258
how assessed .....n. 3, 3254
indebtedness of owner may be deducted .....n. 7, 3254
lien of tax upon 3259
list furnished by county auditor 3255, 3256
mayor files statement with clerk 3257
mayor demands list from county auditor..... 3255
national bank stock can be taxed .....n. 5, 3254
non-resident holders may be taxed .....n. 2, 3254
payment of taxes due upon, 3258
president of bank pays taxes due upon 3258
taxation 3254
valuation 3260
Schools get old bank tax fund, 183
State bank could not be taxed, n. 1, 3254

Banks (*cont'd*) SEC.
Statement of county auditor, 3255, 3256
Town taxing.....3254 to 3260

Bastardy
Mayor may try case of ....n. 6, 3062

Bathing
Places of may be regulated by city .....cl. 19, 3106

Bawdy houses
Regulation.....n. 3, 3155
Renting.....cl. 21, n. 2, 3106
Suppression .....cl. 21, n. 2 3106

Beggars
City may punish .....cl. 20, 3106

Bells
Ringing may be restrained, cl. 23, 3106

Bids
Sewer .....cl. 43, 3106
See Street Improvement.

Bills of mortality
City may keep .....cl. 25, 3106
Definition of .....cl. 25, n. 1, 3106

Births
Reported to board of health... 4995

Board of aldermen
Acts concurrently with council, 3054
Large cities have ...3053, 3054, 3055
President of, election 3057
acts as mayor when 3060

Board of county commissioners
Annexing territory to city .3196, 3197
to town 3389, 3390
Board of health acts as 4993

Board of equalization
Meetings of city board of equalization 3157
Powers 3157

Board of health (city)
City may establish, cl. 35, 3106, 3098
Contracts of.....n. 2, 3104
Council elects members of 3098
De facto board.....cl. 35, n. 1, 3106
Mayor and councilmen may be, 4993
Members of..... 3098
term 3098
Ordinance creating.....cl. 35, 3106
President of metropolitan police a member of 3221c

Board of health (county)
Accoucher reports to..... 4995
Births reported to 4995
Blanks, procures, from state board..... 4998

Board of health (county) (*cont'd*) SEC.
Clerk of board and his duties.. 4996
Coroner's duties with reference to 4995
Council acts as..... 4993
County commissioners may act as..... 4993
Deaths reported to 4995
De facto board.....cl. 35, n. 1, 3106
Duties of board 4994, 4997
secretary 4993
Fees of county clerk..... 4996
Fines..... 4994, 4995
Forms supplied by state board, 4998
Householder reports death or birth to..... 4995
Mayor member of board 4993
Mayor and council act as board 4993
Misdemeanor not to report to, 4994, 4995
Notice to report birth or death, 4995
Penalties 4994, 4995
Physicians report to 4994, 4995
Report of county board..... 4994
Secretary..... 4993

Board of health (state)
Accoucher's reports..... 4995
Annual report of board 4987
Appointment of members..... 4986
Appropriation, annual..... 5000
Births, reports concerning 4995
Blank forms prescribes 4998
furnishes local board 4994
prepared by secretary 4990
By-laws, may adopt 4988
Clerk of county, duties to 4996
fees 4996
Coroner's duties to 4995
County board's duties to..4993, 4998
Deaths, reports concerning ... 4995
De facto board.....cl. 35, n. 1, 3106
Duties 4987, 4988
of secretary 4990
Examinations, may make of premises..... 4988
Expenses of board..... 4991
Fees of county clerk..... 4996
Forms prescribed 4998
prepared by secretary 4990
Local boards subordinate to... 4993
Marriages, reports concerning, 4996
Meetings 4988
Members, appointment 4986
expenses..... 4991
salaries 4991
terms..... 4986
Office furnished..... 4999
Physicians..... 4995
President, how chosen..... 4988
Quarterly meetings 4988

Board of health (state) (*cont'd*) SEC.
Quorum..... 4988
Record kept by secretary..... 4990
Reports annually 4987
of local board to 4994
Rules, may adopt 4988
Salary of secretary 4991
Sanitary statistics collects, 4990, 4992
Secretary, blanks prepares.... 4990
duties 4990
expenses..... 4991
information collects 4990
member of board 4989
salary 4991
term of office 4989
State board, who composes.... 4986
Statistics, collects.....4990, 4992
Terms of officers..... 4986
Vacancy, how filled 4986
Vital statistics, collects...4990, 4992

Board of health (town)
Town trustees act as..... 4993

Board of police
City may establish.....cl. 8, 3106
See Police.

Board of public improvements
Buildings, condemn..... cl. 32, 3106
City may establish..... cl. 32, 3106
Powers..... cl. 32, 3106

Board of town trustees
Board of health acts as..... 4993
Census, orders, of town for incorporating as a city..... 3031
City election, orders, when first incorporated 3037
clerk, appoints, for such election..... 3034
Concurs in marshal's appointments of enumerators 3032
Divides city into wards..... 3037
Election for incorporating city orders 3033
affidavit of result, makes.... 3035
inspector, appoints 3034
Wards, divides city into for first election 3037
See Towns.

Board of waterworks trustees
See Waterworks.

Bona fide purchaser
Purchaser of railroad aid bonds.....n. 14, 3152
Purchaser of bonds protected, n. 4, 3119

Bonds SEC.
Aid to railroad by city 3152
Affidavit showing value of taxable property 3119
request for 3119
journal entry 3119
Bid, bond accompanying bid for public work..... 3162
Bridge companies..... 3152
Bona fide purchaser protected, n. 4, 3119
Cancelled by city treasurer.... 3080
Coupons.....n. 5, and 3119
Custodian 3079
Excessive issue, effect 3120
Form.....n. 6, 3119
Formalities, what are necessary.....n. 3, 3119
Funding in cities having $30000 of debts 3125
having 16,000 population, 3118, 3119
having 16,000 voters..... 3120
in cities and towns having less than 10,000 voters.... 3230
Hydraulic companies 3153
subscription to stock..... 3153
Interest secured by coupons, n. 2, 3343
Investment of city funds temporarily 3158*a*
Lost.....n. 6, 3119
New in place of embezzled bonds may be issued..... 3314
Notice of sale..... 3119
Official, city..... 3095
Officers of city can not purchase..... 3104
Ordinance authorizing issue of bonds 3119
Power of town to issue....n. 3, 3343
Premium received by treasurer, n. 2, 3083
Railroad company, see.
Rate of interest..... 3119
Receipt for cancelled bonds... 3083
Redemption of sinking fund bonds 3126*a*
treasurer makes 3080
Registry..... 3119
Report of committee concerning..... 3119
treasurer of city..... 3119
School purposes..... 4488
Seal omitted, effect.....n. 7, 3119
Security for arms loaned city, 3227
Sinking fund, see.
Squandered, new bonds may be issued in place of.....n. 1, 3119
Statute must authorize the issue .....n. 1, 2, 3119
Temporary investment 3158*a*
Town may issue, n. 1, 3342; 3343; 3230
how sold 3344

Bonds (*cont'd*) SEC.
sinking fund..... 3231
tax to pay 3345; 4490
to erect public buildings, 3343 to 3345
Treasurer's report..... 3119
required to give extra bond.. 3345
Turnpikes, donations to, 3152; R.S. 1881, § 5099
United States bonds can not be taxed .....n. 9, 3156
Water-works bonds 3265
See Debt.

Bonds (official)
Action upon.....n. 3, 3095
Approval..... 3095
City officers, where filed..... 3095
Clerk of town..... 3320
Marshal of town 3320
Mayor 3062, 3095
Failure to give 3050*d*
effect .....n. 1, 3050*d*
Form..... 3095
Sureties.....n. 5, 3095
Treasurer of town..... 3320

Bond of indemnity
City may take from one depositing obstructions in street, cl. 18, n. 2, 3106

Books
Clerk has custody of city's.... 3068
See Schools.

Borrowing
City may .....n. 22, 3106

Boundaries
City 3248
Town 3248

Bribery
Disqualifies for holding office. 87

Bridges
Aid to build may be given by city 3152
City may locate and regulate, cl. 40, 3106
has exclusive control over .. 3161
has exclusive control over county bridges within city limits.....cl. 40, n. 4, 3106
outside city limits..... 3161
County builds within city or town 3161*a*
Purchase by city 3152*a*
by city on state boundary line .....cl. 40, 3106
Railroad must build over streets .....n. 28, 3161
Repairing, city must.....n. 25, 3161
county bridges, city must repair .....cl. 40, n. 4, 3106
town must .....n. 4, 3328

Bridges (*cont'd*) SEC.
Wabash and Erie canal, must repair .....cl. 40, 3106
Stock in taken by city.....3152*a*
Town must repair .....n. 4, 3328
has exclusive power over ... 3367
may build..... 3367
Traction engine upon....n. 25, 3161
Viaducts .....cl. 40, n. 3, 3106

Buildings
Condemnation.....cl. 32, 3106
Destruction to prevent fires .. 3203
payment for buildings so destroyed..... 3203
Manufactories.....cl. 4, 3106
Nuisances in .....cls. 4, 10, 3106
Permits to erect.....cl. 32, 3106
Private ..3156, 3161, 3198, 3199, 3203
Public.....cl. 45, 3106
Removal.....cl. 32, 3106; n. 3, 3155

Burials
City may regulate and prohibit within its limits, cl. 5, n. 3, 3106

By-laws
General welfare clause authorizes adoption 3155
Mayor tries violation of 3062
Publication in town .....cl. 16, 3333
Recording and signing 3099
Synonymous with ordinances, n. 2, 3099
Water-works trustees may adopt..... 3272
See Ordinances.

Cabs
Stands and rates regulated by city .....cl. 36, 3106

Canals
Use for water-works.....4203*k*

Carriages
City and town may tax 3156

Cattle
Running at large in city..... cl. 21, 3106; cl. 35, n. 2, 3106

Cemetery
Beyond corporate limits, city may own .....n. 2, 3154
Control..... 3287
Conveyance by county board of commissioners to city..... 3286
Council may establish, cls. 5, 45, 3106
Deed of county commissioners, 3286
acceptance..... 3287
recording 3287
Exempt from taxes..... 6276
Expense of removal of dead...3290*a*
Gift of..... .....3290*a*
Injoining use of .....cl. 5, n. 1, 3206

Cemetery (*cont'd*) SEC.
Prohibiting use of outside corporate limits .....n. 1, 3106
Protecting..... 3288
Purchase .....3290*a*; cl. 45, 3106
Notice of list of dead 3291
Ordinance to protect 3288
Petition to vacate 3290
Real estate, city may purchase for .....cl. 45, 3106
Removal of dead from, 3290; cl. 5, n. 2, 3106
notice of list of dead..... 3291
notice to remove dead bodies, 3291
petition for removal 3290
order for removal..... 3290
record of dead removed 3291
Resolution for a conveyance .. 3286
Rules may adopt for regulating, cl. 5, 3106
Street improvement can not be assessed for.....n. 17, 3162
Taking land for is taking for a public use.....n. 18, 66
Taxation, exempt from 6276
Town may purchase, lay out and regulate .....cl. 13, 3333
acceptance from county..... 3287
conveyance to by county board..... 3286
powers as to..... 3288
re-interment 3291
title to..... 3292
vacation of..... 3289
Use of eminent domain to acquire.....n. 18, 66
Vacation..... 3289
notice to remove bodies..... 3291
petition to vacate 3290
record of removal 3291
re-interment..... 3291
removal of bodies 3291
title 3292

Census
Incorporating town as city, how taken 3031; 3032
Time within which must be taken..... 3032

Charges
How preferred against city officers 3101

Charter
City may surrender 3127, 3128
decree for..... 3128
effect .... 3039 to 3041; 3129, 3130
Special can not be granted by legislature..n. 1, 119; n. 6, 3031
Surrender ..3127 to 3130; n. 4, 3106

Charitable institutions
Taxation 6276

Chief of fire department SEC.
Arrests may make 3201
Common council elects 3098
Duties and powers 3201

Churches
Assessment for street improvement ..... n. 17, 3162
Exemption from taxes 6276

Cider
Sale of may be regulated by city ..... cl. 13, n. 4, 3106

Circuit court
Appoints city commisioners .. 3166
Drain establishes 3221*bb*

Cisterns
City may build and regulate, cl. 43, 3106; 3151
may take land for ..... n. 12, 66

Citizens
Do not constitute the incorporation ..... n. 4, 3036
May serve on juries in actions for penalties ..... n. 19, 3066

City
Agricultural lands, taxation ... 3261
Debt limited 220
See Indebtedness.
Failure to exercise powers, effect ..... cl. 4, 3106
Incorporation 3031
must be under a general law, 212
election for ..... 3033 to 3035
Local self-government, n. 2, 3106; n. 2, 3043
Surrender of powers ..... n. 4, 3106
Powers generally ..... n. 3, 3106
beyond limits 3154
Tax law governs 3160, 3263
installments, when may be paid in 3225*a*
county auditor may collect city taxes 3225*a*
Union, see Union.

City of 15,000 inhabitants or more
Loans by ..... 3116 to 3119
bonded indebtedness, limit of, 3119
bonds, issuance of 3118
interest on 3119
limit of 3119
maturity of 3119
negotiation of 3118
sale, price of 3119
treasurer's duties 3118
limit of 3116
ordinance, passage of 3118
purposes of 3117
taxables, affidavit as to 3118

City of 15,000 voters or more SEC.
Aldermen, board of ..... 3051 to 3060
expulsion of members 3053
districts 3053
election of 3053
holding over by 3053
ineligibility of 3054
meetings, public 3058
number of 3053
president of 3057
acting-mayor, when 3060
pro tempore 3057
qualifications of 3053
records, how kept 3058
salary of 3059
term of 3053
vacancies 3053
yeas and nays, when required, 3058
Committees, joint, prohibited .. 3055
Concurrent action, when required 3054
Councilmen in 3052
election of 3052
salary of 3059
term of 3052
Districts, aldermanic 3053
sewer 3061
Elections, when held 3052
Joint convention, when 3054
purposes of 3054
Ordinances become laws, when, 3055
Separate action, when allowed, 3055
Sewers, districts for 3061
construction of 3061
tax for 3061
Wards, number of 3052
voters in each 3052

City under 16,000 voters
Bonds, funding, may issue 3230
sinking fund, tax for 3231

City of over 16,000 voters
Appropriations, when forbidden, 3124
Bonds, funding, may issue 3120
for school purposes ..... cl. 8, 4460
Debt limited 3121
Library tax 3122, 4460
Loans, temporary, when 3121
Orders, when issue of forbidden, 3123
liability for drawing 3123
penalty for overissue 3120
treasurer's duties as to 3123
Publication of indebtedness ... 3120
School commissioners, tax by . 3122
Statement of warrants 3120
Tax-levy limited 3122

City and town union
See Union.

City assessor
See Assessor (City).

City attorney SEC.
See Attorney.

City auditor
See Auditor (City).

City board of health
See Board of Health.

City civil engineer
See Civil Engineer.

City clerk
See Clerk (City).

City commissioners
Appointment of..... 3166
pro tempore..... 3167
Disqualification of 3167
Duties, general, of 3166
Majority may act 3169
Meetings of 3168
non-resident owners, notice to 3168
resident owners, personal service 3168
Number of..... 3166
Oath of..... 3166
Term of 3166

OPENING CASES.

Alleys, altering of.....3166 to 3183
opening of.....3166 to 3183
straightening of.....3166 to 3183
Assessment for..... 3170
collection of 3177
report of 3178
Benefits assessed, a lien on realty 3175
Bridges, appropriation of..... 3179
Change of lines of thoroughfare 3190
City marshal serves notices .. 3168
Damages, tender of 3182, 3183
payment of.....3176, 3182
Examination of lands for 3168
Hearing and proceedings 3169
Highways, appropriation of... 3179
Improvements during pendency 3194
Infants and insane, rights of .. 3173
Injunction against 3181, 3183
Interpleader, when 3182
Meetings of..... 3168
Notice, defective, effect of 3173
non-resident owners (to), 3168, 3183
resident owners (to)..... 3168
Plat of, record of 3192
Proceedings before reference.. 3167
before commissioners 3169
in common council 3174
Reports from commissioners, 3171 to 3175
action upon 3174

City commissioners (*cont'd*) SEC.
appeal from.....3180, 3181
reference back 3189
second report 3189
action upon..... 3189
Sewers, taking land for.3166 to 3183
Streams, altering of....3166 to 3183
straightening of.....3166 to 3183
Streets, altering of.....3166 to 3183
opening of .....3166 to 3183
straightening of.....3166 to 3183
Water-courses, as to....3166 to 3183

VACATION CASES.

Alleys, of.....3184 to 3194
changing location of..... 3190
proceedings..... 3190
Benefits, assessment of..... 3185
payment of 3187
report of..... 3186
Hlghways, of.....3184 to 3194
Improvements, during pendency 3194
Petition for..... 3184
plat to accompany..... 3184
Petitioners pay expenses..... 3184
notices serve 3184, 3185
Plat, record of 3192
who makes..... 3193
Proceedings by commissioners, 3185
in common council..... 3187
Report (first) by commissioners 3186
action upon..... 3187
reference back 3189
second report 3189
action upon..... 3189
Squares, public, of .....3184 to 3194
Streets, of .....3184 to 3194
changing location of..... 3190
proceedings..... 3190
Water-courses, of.....3184 to 3194
See Streets, Opening and Vacation of.

City court
Accused, arrest and detention of 3066
committment of..... 3067
Appeals from 3216
Changes of venue from 3213
Civil causes, certain, triable in, 3207
Commitment 3067
Constable's duties in 3218
Court of record, jurisdiction as, 3209
Execution, issuance of..... 3217
stay of 3217
transcript (on) 3212
Fees, city judge's 3219
city marshal's..... 3218
Constable's 3218
Issues of 3214
Judge, bond of..... 3205
clerk of court acts as..... 3212

City Court (*cont'd*) SEC.
commission of..... 3205
election of 3043, 3204
fees of 3219
law, may practice 3221
oath of office 3205
powers of..... 3211
pro tempore..... 3220
qualifications of..... 3204
seal of 3208
term of office 3204
vacancy..... 3050
Judgment, effect of 3209
stay of..... 3067
Jurisdiction of 3206
Mayor, see.
Name of court 3206
New trial, how had 3215
Penalties, action for, how brought 3066
trial of 3066
Pleadings, rule as to..... 3066
Process, service of 3066, 3210
Realty, how sold on writ of .. 3212
Records, how kept 3212
Rules of..... 3211
See Court (City).

City judge
See City Court.

City marshal
See Marshal (City).

City treasurer
See Treasurer (City.)

City orders
See Orders.

Civil engineer (city)
Appeal from.....3073*a*
bond 3073*a*
Appointment 3043
Bond..... 3095
Costs of street improvement, ascertains..... 3163
Dock construction, superintends..... 3149
Duties 3073
Election in large cities..... 3054
Estimates, compelled to make, n. 8, 3073
form..... 3073
makes 3073
Fees as surveyor .....n. 4, 3073*a*
Grade, can not establish..n. 10, 3073
nor change .....n. 1, 2, 3, 3073
Harbors..... 3132
Oath..... 3095
Orders of council, fulfills..... 3073
Plans, prepares 3073
for docks 3146
Plat of street, makes.....3192, 3073
Record of surveys, keeps 3073

Civil engineer (city) (*cont'd*) SEC.
Removal .....n. 6, 3043
Surveys, makes 3073
evidence of 3073
record 3073
Specifications, makes 3073
Street lines, preserves 3073
Superintends opening street .. 3073
public works 3073
Term 3043, 3054
Vacancy 3050

Claim
Allowance by city 3069
City officers can not purchase against city..... 3104
Payment..... 3069
Town 3340

Clarksville
Amending charter..... 235

Clerk (city)
Accounts of city, keeps..... 3069
Assessment for taxes, corrects, 3157
makes..... 3262
Banks, assessments of..... 3257
Board of equalization, member of..... 3157
Bond and oath 3095
conditions.....n. 2, 3095
Bonds for loans, duties as to... 3118
Books and papers, keeps, 3068, 3058
copies as evidence..... 3068
Caption of transcript 3068
Certificate to transcript..... 3068
of election..... 3095
Copy of city commissioners' report, delivers to treasurer, 3174, 3175
Copies and transcripts, makes . 3068
Delinquent list, makes..... 3093
Deputy..... 3043
how selected in large city.... 3058
keeps records of board of aldermen..... 3058
Documents, files and keeps.... 3069
Duplicate tax list, makes and delivers to treasurer..... 3070
Duties..... 3068, 3069
concerning loans 3118
Election..... 3043
certificate of, from..... 3095
Embezzlement by filling up blank warrants.....n. 5, 3068
Fees for copies..... 3068
Ferries, appeal bond filed with, 3103
duties on appeal concerning 3103
Files and keeps documents.... 3069
city commissioners' reports, 3175
Firemen registered by..... 3202
Funding bonds, duties as to.... 3120
Harbor, duties as to, 3134; 3136; 3138; 3144; 3146; 3147

Clerk (city) (*cont'd*) SEC.
Justice of peace, when may serve as .... n. 1, 176; n. 6, 3068
Licenses, countersigns and registers 3068
dog 3068
general 3068
market 3068
Loans, duties as to 3118
Meetings of council, attends .. 3068
Member of board of equalization 3157
Minutes of council, keeps 3097
Monthly statement 3069
Notice of condemnation proceedings, issues 3266
election, gives 3304
Notifies city commissioners of appointment 3161
proposed opening of street .. 3168
corporation of proposed opening of street 3179
persons elected to office 3048
Nunc pro tunc entry .....n. 1, 3068
Oaths, can not administer .. n. 1 3068
official 3095
filed with 3049; 3095
Orders, draws 3069
overdrawing, penalty for 3123
register of, keeps 3069
restrictions as to drawing ... 3069
Ordinances, attests 3099
book of, keeps 3099
Permits, countersigns and registers 3068
Plat of city, signs 3249, 3250
Proceedings, keeps 3068; 3097
Proof of publication of notice, obtains 3168
Quietus, issues 3080
Receipts 3080; 3069
for canceled bonds 3083
Records, keeps 3058
how may make. ....n. 1 to 3, 3068
in cities of 15,000 3058
Record of street openings, keeps, 3188
Registry of orders and receipts, keeps 3069; 3080
Report as to taxes 3070
monthly 3069
Seal, uses .....3068; n. 4, 3062
Settlement, makes, with treasurer 3093
how made 3090
statement, makes 3083
tax sales, reports, to 3092
Sewer certificate, issues .. cl. 43, 3106
Signs statement of city's indebtedness 3120
Street improvements, duties of, 3165
changes, duties of 3190
opening, 3168; 3174; 3175; 3178; 3192

Clerk (city) (*cont'd*) SEC.
vacation 3188; 3192
Survey, keeps 3251
Tax deed, signs .....n. 3, 3094
warrant, issues 3070
Taxes, duties as to 3070; 3262
Term of office 3043; 3050*b*
Town, union of, duties as to .. 3238
Transcript 3068
caption 3068
certificate 3068
Treasurer's report, presents, to council 3083
Vacancy, how filled 3050; 3050*a*
term 3050*b*
Water-works, as to, 3266; 3267; 3269
Warrants, draws and countersigns 3069

Clerk (circuit court)
Approves mayor's bond 3062
Record of result of city election, makes 3035
town election, makes 3309
Trustee of county library 3784

Clerk (town)
Bond of 3320
County auditor acts as in tax sales 3351
Election 3308
Duties of 3310; 3324
Notifies street commissioners, 3368
land-owners 3266
Oath of 3313
Records, keeps 3324
Treasurer may act as 3308

Coaches
Council may regulate use of, cl. 12, 3106
Standing in street .. cl. 18, n. 3, 3106

Coal
Sale of, regulated by city, cl. 31, 3106

College
Exempt from taxation 6276
endowment exempt ...6278; 6278*a*

Commitment
City 3066
State 3067

Commissions
Effect of issuing .....n. 4, 3043
Election certificate may serve as .....n. 2, 3047
Governor signs 228
Mayor signs ....n. 4, 3043; n. 5, 3062

Common council
Acts proved by records, n. 2 to 4, 3068
Adjourning over .....n. 7, 3097
Arrest, may authorize councilman to make .....cl. 29, 3106

Common council (*cont'd*) SEC.
Assessment for taxes 3157
Board of equalization, acts as . 3157
Board of health, elects, 3098; cl. 35, 3106; 4993
Board of public improvement, may establish .....cl. 32, 3106
Bond, not required to give 3095
Bridges, power over 3161
Called meetings, powers ..n. 1, 3097
Census, orders, for incorporating city under general law.... 3031
Chief of fire department, elects, 3098
Charges before, how preferred, 3101
Clerk attends meetings..... 3068
records, keeps..... 3097
Consents to mayor's depositing docket with justice 3063
Contempt, may punish, cl. 50, n. 1, 3106
Contracts, interest in 3104
Costs, may impose 3155
Delegation of powers, may not make .....n. 4, 3096
Deputy's selection, ratifies, n. 7, 3043; 3098
Disorderly person, may remove from council chamber, cl. 50, n. 1, 3106
Docket of mayor, takes charge of..... 3063
order concerning 3063
Duties of.....3106; 3227; 3155
Election of city officers 3098
Election of..... 3043
Expulsion of members 3101
Exemption from street improvement, may give.....cl. 49, 3106
Finances of city, controls 3106
Grade of street, must establish, n. 10, 3073
Inspects home for friendless women 6242
Jurisdiction, two-mile limit, 3154; cls. 11, 4, 26, 45, 3106; 3062
Majority of council, what is, n. 5, 3097
Mayor a member of.....n. 4, 3096
casting vote 3096
Meetings, resolutions for, 3096; 3097
notice of.....n. 1, 2, 4, 3097
presumption as to ....n. 3, 6, 3097
Members of, not personally liable.....n. 1, 3096
may expel 3101
Minutes, signing.....n. 1, 3097
kept by clerk..... 3097
Notice of meeting.....n. 1, 2, 3097
sufficiency.....n. 4, 3097
Nunc pro tunc entry .....n. 1, 3068
Oath of members..... 3095
Officers, appoints, when ...n. 3, 3098
may expel 3101

Common council (*cont'd*) SEC.
Order of business..... 3096
Ordinances, passage..... 3099
publication 3100
Penalties, limit may impose... 3155
Powers over street is exclusive, 3161
in general..... 3106
Presumption, meetings presumed to be regular .....n. 3, 3097
that all members were present .....n. 6, 3097
President *pro tem*.....n. 5, 3096
appointment, form 3096
can not sign precept ....n. 5, 3096
Property of city, controls, 3106; and cl. 29, 3106
Quorum ....n. 5, 3097
Records, *nunc pro tunc* entry of .....n. 1, 3068
signing .....n. 1, 3097
Records result of town election, 3310
Removal of councilmen...n. 9, 3043
Rules for city officers, may adopt..... 3098
Salaries of city officers, when determines .....n. 1, 3105
School trustees, elects, cl. 48, 3106, 4439
Sealer of weights and measures, elects..... 3098
Special meetings, powers at, n. 1, 3097
Street commissioners, elects .. 3098
Supervisors of streets, elects .. 3098
Term of 3043
Tie vote.....n. 5, 3096
Vacancies in.....3050, 3050*a*
Welfare clause .....3106; cl. 4, 3106
Working on streets, may regulate 3067
Yeas and nays.....n. 3, 3099

Commons
Town may control 3338
Use for ferry in city..... 3103

Company
May incorporate a town 3493

Complaint
Against election officer 3034
Against officer not serving.... 3049
Amendment in circuit court, n. 11, 3066
Before mayor 3066
form 3066
sufficiency.....n. 6, 3066
Indorsement 3066
Recovery of penalty..... 3066
Sufficiency 3066
See Forms.

Compensation
Pay for services 66

Compromise SEC.
City may make .....cl. 19, 3106

Condemnation proceedings
Constitutional provisions..notes, 66

Conductors
Judgment against 3065
May be arrested..... 3065
Service of process upon..... 3065

Congressional fund
Schools get..... 183

Conservator of the peace
Judicial officers are 175
Mayor is 3062

Consequential damages
Change of grade .....n. 1, 2, 3, 3073
Constitutional provisions do not apply to .....n. 1, 66

Constable
City marshal has same powers and fees 3076, 3077
Fees 3077*a*
before city court..... 3218
Mileage 3077*b*
Process from city court may serve 3210
Warrant, may receive from mayor.....n. 1, 3066

Constitution
Laws continued in force by it.. 235
When went into force 235

Construction
Ordinances, how construed, n. 18, 3066

Contagious diseases
Patients, confinement of..cl. 24, 3106
quarantine.....cl. 6, 3106
removal .....cl. 24, 3106

Contempt
Common council may punish, cl. 50, 3106
Disorderly person may be removed from council chamber .....cl. 50, n. 1, 3106
Mayor may punish .....n. 11, 3062

Contest
Election proceedings, council acts in when 4767

Contract
Award to best bidder 3162
Board of health may make, n. 2, 3104
Breach of, by city.....n. 15, 3106
Capacity of city to make..n. 2, 3106
Cisterns built under bids, cl. 43, 3106
City attorney draws 3078

Contract (*cont'd*) SEC.
City judge can not make with city.....n. 1, 3212
Contractor, rights of 3164, 3165
Councilmen can not make with city .....n. 1, 3104
Manner of executing.....n. 17, 3106
Marshal can not make with city.....n. 2, 3104
Mayor signs. 3096
Officers can not make with city, 3104, 3163
when interested in city contractor may be punished ..3226*a*
Ratifying .....n. 18, 3106
Sewers, see.
Streets, see.
Void if officer has interest in.. 3163
when 3104

Contractor
Must receipt records when paid,3229*i*
Notice for sewer bids, form, cl. 43, 3106

Copies
Clerk makes of records 3068

Corporation
Actions against..... 3065
County can not subscribe for stock..... 198
Debt, State can not assume..... 198
Judgment against 3065
May incorporate a town 3493
Must be formed under general laws..... 212
Personalty, taxation of..... 3156
Service of process upon 3065
Stock, taxation of 3156
Taxed for schools 183

Costs
City not liable for, except for those made in circuit court, 3078; n. 12, 3066
Council may impose 3155
Prisoners work out 3067
Removal of obstruction from street, who pays cost of... 3191
Street improvement, how assessed..... 3163
collected 3165*a*
Worked out for town fine..... 3347

Councilman
City not liable for individual acts of.....n. 2, 3096
Cities of 15,000 have..... 3052
Conservators of the peace, cl. 29, 3106
Election..... 3043
in large city 3052, 3056
Fire-wardens *ex officio* 3198
Interest in railroad aid effect,n.9, 3152
may act as trustee of aid bonds.....n. 1, 3104

Councilman (*cont'd*) SEC.
Liability for official acts....n. 5, 3043
Lucrative office, does not hold, n. 1, 90
Notice to, of defective street is notice to city, n. 2, 3096; n. 5, 3043
Number 3043
Orphans' home, visits.....n. 7, 3096
Office not lucrative,.....n. 1, 90
Personal liability, n. 1, 3096; n. 5, 3101
Removal from ward, effect, n. 9, 3043
Salary..... 3105
in large cities..... 3059
Term 3043
Town does not have .....n. 1, 3042
Vacancy.. n. 1, 2, 3050; 3950*a*; 3050*b* filled by appointment..... 3050*a*
term..... 3050*b*

County
Area 229
Debt, State can not assume.. 198
Exemption of property from taxation..... 6276
Subscription to stock or corporation 198

County auditor
Bank stock, duties in assessing, 3255
City taxes, extends, on county tax duplicate..... 3225*a*
Duties in assessing property, see taxation.
Statement concerning bank stock, gives..... 3255
Town taxes, extends, on tax duplicate.....3225*a*

County treasurer
Collects town tax..... 3353; 3203*h*
pays over.....3203*i*
Duties, see Treasurer (county), and Taxation.

Coupon
Form..... 3119

Court-house
Assessment for street improvement.....n. 1, 3164
when can not be..... n. 17, 3162
Exercise of eminent domain to acquire ..... n. 1, 66

Courts (city)
Acknowledgments, judge may take..... 3211
Appeals from 3216
costs upon .....n. 2, 3216
to supreme court .....n. 1, 3216
Appointment of judge..... 3043
Bond of judge 3205
Change of venue from..... 3213
Cities over 5,000 population may have 3204
Commission of judge 3205
Contempt may punish..... 3211

Courts (city) (*cont'd*) SEC.
Contract, judge of, can not make, with city.....n. 2, 3104
recision of may be tried in, n. 2, 3206
Costs on appeal .....n. 2, 3216
Criminal jurisdiction.....3206*a*
Court of record 3209
Depositions, judge may take .. 3211
Election of judge 3204
Executions 3217
Fees.....3219; 3063
marshal's..... 3218
relinquishment 3063
Females, sends to house for friendless women 6240
Judge's election 3204
bond 3205
fees 3219
oath..... 3205
practices law..... 3221
pro tempore..... 3220
term of office..... 3204
Judgment, effect..... 3209
lien 3212
Jurisdiction..... 3206
Lien of judgment 3212
Marriages, may solemnize 3211
Marshal's fees..... 3211
Mayor holds, every day..... 3062
place of holding..... 3062
Name 3206
New trials..... 3215
Oath of judge..... 3205
Pleading and practice 3206
Powers of judge 3211
Practice and pleading 3206
Practicing law, judge may 3221
Process and service 3210
Pro tempore, judge of 3220
Qualifications of judge..... 3204
Record, court is one of..... 3212
Release of fees..... 3063
Rent of office, judge can not collect from city .....n. 1, 3212
Resolution creating 3204
Rules, may adopt..... 3211
Seal..... 3208
Sittings 3212
Style of court..... 3206
Term of office of judge 3204
Transcript of judgment 3212
Trial.....3207, 3214
Vacancy in office of judge, how filled 3050
See City Court.

Crimes
What offenses can not be punished by a city or town, 3066*a*, 3062

Crossings
Incumbering.....cl. 18, 3106
Town may build .....cl. 9, 3333
See Flagmen, and Railroads.

Culverts SEC.
City may regulate and locate cl. 40, 3106

Damages
Abutting owner, when may claim.....n. 22, 66
Agreement concerning amount n. 23, 66
Attorney's fees can not be allowed as a part.....n. 9, 3170
Bond may be taken by city for cl. 32, 3106
Change of grade, must first be paid..... 3073
City liable for.....3161, 3203
Compensation a judicial question .....n. 9, 66
Consequential.....n. 6, 3106
change of grade causing, n. 1, 2, 3, 3073
constitutional provisions do not apply to .....n. 1, 66
improvement of street causing .....n. 7, 3162
Depreciating value of property n. 23, 66
Estimating .....n. 21, 66
Evidence, n. 21, 66; n. 4, 3180; n. 10, 3170
Excessive, new trial because of, n. 14, 3066
Grade changed, effect, n. 20, 21, 66; n. 1, 3073
Injunction lies until paid, n. 2, 3170
Legal tender of, what is.....n. 4, 66
Measure, n. 5, 8, 20, 21, 23, 66; n. 4 to 11, 3170
Mode of ascertaining .....n. 3, 66
Procedure .....n. 3, 66
Noise may cause .....n. 23, 66
Payment or tender .....n. 1, 3176
Presumption as to amount and payment.....n. 1, 3181
Proof of, n. 21, 66; n. 4, 3180; n. 10, 3170
Railroad may be entitled to, n. 11, 3170
Smoke may cause .....n. 23, 66
Tenant, when entitled to..n. 7, 3170
Tender essential, n. 7, 66; 3182, 3183
when must be.....n. 1, 2, 66
Well, when may be taken by city .....n. 3, 3170
Witness' opinion.....n. 21, 66
See Eminent Domain.

Dancing
Prohibition in streets.....n. 5, 3155

Dangerous material
Town may regulate keeping of, cl. 3, 3333

Day
Fraction of, how counted, n. 5, 3067

Dead animals SEC.
Removal, 3226; cl.22,n.2, 3106; cl.35,n.2, 3106

Deaths
Reports of to board of health.. 4995

Debts
Action on city warrant may be maintained .....n. 2, 3069
Annual rental .....n. 4, 220
Ascertaining amount .....n. 6, 220
Attorney fees .....n. 4, 220
Bonds .....n. 3, 220
Buildings .....n. 3, 220
City of 15,000 may liquidate... 3116
Current expenses.....n. 3, 220
Fire engine, purchase.....n. 3, 220
Funding .....n. 3, 220
Gravel road bonds .....n. 4, 220
Implied contract.....n. 8, 220
Labor.....n. 3, 220
Light ..... n. 3, 220
Limit, purchase of real estate, n. 2, 3159
Market-house .....n. 3, 220
Meaning of constitutional limitation .....n. 3, 220
Municipal limit 220
Petition for town to incur, n. 3, 5, 3342
Railroad subsidy .....n. 3, 220
Ratification .....n. 8, 220
Safe, purchase.....n. 3, 220
State can not assume municipality's debt 198
Street improvement bonds, n. 4, 220
Tort, constitutional limit does not apply to .....n. 37, 3161
Town, when forbidden to create, 220, 3342
state can not assume..... 198
Two per cent. limit 220
Void, when in excess of allowed by law .....n. 7, 220
Water-works bonds .....n. 3, 220
See Bonds.

Dedication
Abandonment of street...n. 15, 3161
Acceptance by public necessary .....n. 14. 3161
Acquiescence in user of ground for a way.....n. 13, 3161
Canal in street and abandoned, n. 11, 3161
Conditional .....n. 17, 3161
Common law dedication, n. 16, 3161
Estoppel of abutting owner, n. 17, 3161
Garden marked on plat, effect, cl. 45, n. 4, 3106
Implied, must be rebutted in a complaint for an injunction.....n. 12, 3161

Dedication (*cont'd*) SEC.
Intent essential.....n. 12, 17, 3161
Parol proof of, sufficient..n. 11, 3161
Plat sufficient .....n. 11, 3161
effect .....n. 1, 2, 3374
Public square .....n. 1 to 5, 3375
Railroad depot grounds..n. 15, 3161
Sale of lots bordering on street, effect .....n. 11, 3161
Square or plat designated on map, effect .....cl. 45, n. 4, 3106
User sufficient. .....n. 13, 3161

Defaulters
Can not hold office 91

Defenses
Before mayor .....n. 5, 3066

Delinquent taxes
See Taxation.

Depositions
City judge may take 3211
Mayor may take 3062

Depots
Runners at, city may regulate, cl. 37, 3106

Deputies
Assessors may have 3043
Clerk of city may have ...3043, 3058
election and duties in large city 3058
Council must consent to certain appointments, n. 7, 3043; 3098
Importing deputy peace officers unlawful ..... .3043*a*, 3043*b*
acts are illegal 3043*c*
penalty..... .....3043*d*
Marshal may have..... 3043
council approves his appointments 3043
Treasurer may have..... 3043
Who may not be 3043*a*

Disannexation of territory
Boundaries modified by city .. 3248
Conditional, may be..... 3248
acceptance of condition by land-owner 3248
Consent of land-owner to 3248
Effect on taxes and liens..... 3248
Notice of filing petition for ... 3247
Order for..... 3248
Petition for..... 3248
Procedure.....3247, 3248
Resolution of disannexation .. 3247
Town, how may make....3247, 3248

Diseases
Infectious or pestilential, power of city during .....cl. 24, 3106

Disfranchisement SEC.
General assembly may provide for 89

Dissolution of city
Effect.....n. 1, 3130
Order-book entry for 3130
Petition for..... 3130
Summons..... 3130
Town, and effect 3318, 3319

Distillery slops
Regulating sale of.....n. 3, 3155

Ditches
General drainage law may apply to cities and towns, cl. 43, n. 2, 3106

Docket
Council consents to transfer .. 3063
Entry of trial 3066
what necessary..... 3066
Mayor's.....n. 1, 3063
depositing with justice of the peace..... 3063
Transfer, council consents to.. 3063
order for 3063

Docks
Assessments for a lien 3147
how collected..... 3148
repairs may be made for 3145
when list returnable..... 3148
Built by city .....cl. 34, 3106
Civil engineer superintends construction 3149
Condemnation proceedings for, 3150
Construction by city 3145
Contractor, city not liable to .. 3149
Estimate of cost..... 3146
Liability of city for cost of construction 3149
Lien of assessment 3147
Notice to repair..... 3144
Plan and estimate..... 3146
Proceedings to condemn land, 3150
Rates of toll, may fix ....cl. 34, 3106
Regulation by city 3142
Repairing, city may compel .. 3143
notice to repair 3144

Dogs
City may tax 3156
License from city 3068
Taxation of, valid.....n. 14, 3156
Town may tax .....cl. 15, 3333
See Schools, Taxation.

Donations
By plat, and effect..... 3375
How made .....notes, 3375
Legalized 3224*a*

Doors
Breaking down to make arrest, n. 10, 3076

Doors (*cont'd*) SEC.
Obstructing street with, cl. 18, n. 15, 3106
Swing out 4500*a*

Drains
City may construct cl. 2, n. 1, 3106; cl. 43, 3106, 3151
Construction under general powers .....cl. 2, 3106
clerk's warrant to treasurer for payment of cost, ..cl. 2, 3106
ordinance for construction, cl. 2, 3106
report of committee concerning .....cl. 2, 3106
resolution referring construction to committee....cl. 2, 3106
street commissioner superintends 3074
street commissioner's report concerning .....cl. 2, 3106
Plans defective, city liable for damages caused thereby, n. 34, 3161
Private drains, cl. 43, n. 1, 3106; cl, 51, 3106
regulation.....cl. 51, 3106
Public.....cl. 43, n. 2, 3106
Regulations by city of public drains.....cl. 51, 3106, 3151
of private drains .....cl. 51, 3106
Street commissioner superintends construction 3074
Town may build .....n. 1, 3333

Drainage act of 1891
Aggreeing to assessment 3221*kk*
acceptance by city 3221*kk*
Appeal from proceedings 3221*bb*
costs 3221*bb*
entry upon 3221*bb*
Apportionment of appraisers, 3221*z*
notice of..... 3221*z*
Assessment of benefits 3221*cc*
collection 3221*cc*
notice of.....3221*cc*
Bids, advertisement for 3221*cc*
Bond of contractor 3221*cc*
Certificate of drainage commissioner 3221*cc*
City may drain and assess benefits therefor 3221*z*
Collection of benefits 3221*cc*
auditor of county may collect 3221*cc*
Committee upon, appointment 3221*z*
Commissioner of drainage constructs.....3221*bb*
Complaint to collect assessments.....3221*cc*
Construction.....3221*bb*, 3221*cc*
act liberally construed 3221*ee*
Contract for construction 3221*cc*

Drainage act of 1891 (*cont'd*) SEC.
Costs on appeal 3221*bb*
Error may be corrected on appeal 3221*bb*
Establishment of drain.....3221*bb*
Notice of assessment.....3221*dd*
filing petition in circuit court.....3221*aa*
land-owners 3221*z*
order-book, entry upon 3221*aa*
remonstrance, form 3221*aa*
sufficiency.....3221*dd*
Petition..... 3221*z*
signing..... 3221*z*
in circuit court by city, 3221*z*, 3221*aa*
Procedure in circuit court...3221*aa*
in general 3221*z*
Reappraisement 3221*bb*
Remonstrance, and form of ..3221*aa*
Repairs 3221*ff*
Report of appraisers 3221*aa*
committee and approval... 3221*z*
drainage commissioner, 3221*gg*, 3221*z*
surveyor 3221*z*
Resolution for survey 3221*z*
Trial on appeal 3221*bb*

Drays
City may regulate use...cl. 12, 3106

Driving
Immoderate, city may prohibit, cl. 17, 3106
town may prohibit .....cl. 6, 3333

Duplicate tax list
City clerk furnishes 3070

Easement
Burden, pipes not an additional, cl. 28, n. 6, 3106
railroad in street .....n. 7, 3161
sewers in street...cl. 43, n. 1, 3106
water-works in street, cl. 26, n. 7, 3106

Eaves
Overhanging, effect, cl. 41, n. 2, 3106

Education
See Schools.

Elections (city)
Board of elections in city, 3034, 3224
duties.....3046, 3047
Canvass of votes 3046
mandamus to compel ...n. 1, 3046
Certificate of 3095, 3047
inspectors 3047
serves as a commission, n. 2, 3047
tie vote..... 3047
City clerk notifies officers elected 3648
Clerks of.....3039, 4690
Contest of 4767

Elections (city) (*cont'd*) SEC.
Councilmen, of 3043
Electors, who are 3223
First, after incorporation 3037
General election law governs, 3045, 4710*m*
Inspector, appointment 3224
Judges, appointment 3224
Mandamus, to compel canvass of votes ...n. 1, 3046; n. 1, 3047
to compel action on election returns .....n. 1, 3047
Meals for.....n. 1, 4709
Members of board of elections, who are .....n. 1, 3046
New election, order for..... 3047
Notice for 3037
to officer of his election..... 3048
Oath of election board..... 3044
Officers elected at 3043
qualifications 3222
Policemen can not electioneer, 3221*b*
Poll list..... 3046
Precincts, change of..... 3224
size..... 3224
Qualifications of voters..... 3223
of officers 3222
Refusal to accept office, penalty, 3049
Special 4734
Tally-sheet 3046
Tie vote, effect .....cl. 3, 3047
certificate of 3047
Time for..... 3043
in large cities....3052; 3053; 3056
Union of city and town, 3223; 3226 to 3228
Vacancy, how and when filled, 3050; 3053
Voters, who are 3223
Water-works trustees 3265; 3270
See Incorporation of City.

Election (town)
Board of elections, who constitute 3224
Certificate of.....n. 5, 6, 3309
Clerk of circuit court makes record of..... 3310
Clerk of..... 3308
Contest..... 4767
Dissolution of, as to 3318
Electors, qualifications 3223
Failure to file certificate with clerk.....n. 2, 3309
First, how held 3304
notice for..... 3304
General law governs...3224; 4710*m*
How conducted 3307
Inspectors, how appointed, 3224; 3305
duties..... 3307
pro tem..... 3307
Judges..... 3224

Election (town) (*cont'd*) SEC.
Legalized, effect .....n. 1, 3309
Marshal, how elected 3225
Notice of 3304
Oath 3309
Officers, qualifications 3222
Polls, opening and closing.... 3306
Precincts changed..... 3224
size 3224
when wards are 3224
Qualification of voters..... 3223
Statement certified, as to..... 3309
Record of result.....3310; 3301
Tie..... 3309
Time of holding.....3305; 3308
Treasurer of 3309
Trustees of..... 3309
president of..... 3313
Trustees of schools 4439
Union of town and city ..3236; 3237
Voters, qualifications 3223
Voting place .....n. 2, 3305*a*
See Incorporation of Town.

Elections (general)
Absence of elector, regulation as to 4698*a*
Adjournment of forbidden 4708
Affidavits, disposition of.....4710*k*
Altering returns.....4768*ff*
Arrest of briber.....4768*c*
elector forbidden 4684
illegal voter..... 4703
Assemblymen (of) cir. clk. certifies..... 4723
sheriffs certify, when 4724
Attorney fee recoverable, when, 4768*l*
Attorney-general, residence of, n. 8, 4680
Auditor of state, residence of, n. 8, 4680
Bail for person arrested.....4768*c*
Ballot-box, abstracting, a felony, 4701*f*
breaking open 4768*w*
color 4695
construction 4696
destroying.....4768*nn*
inspection of..... 4696
keys to 4696
kind..... 4696
providing..... 4696
seizure 4768*mm*
Ballots, burning 4701*m*
certificate of nomination, to get printed.....4700*c*
clerk's failure to sign....n. 4, 4704
clerk of circuit court keeps.. 4714
color 4701
constitutional amendment, for, 4700*j*
counting.....4705*c*
defective..... 4706

Elections (general) (*cont'd*) SEC.
delivery to wrong person, penalty 4701*e*
device on 4700*c*; 4701
distribution 4701*c*
election clerk delivers to voter, 4704
expense of preparing, paying, 4701*c*
folding 4704
giving out 4701*j*
inducing voter to mark, penalty 4710*d*
initials of poll clerk placed on 4701*h*
inspector receives from county clerk 4701*g*
delivers to clerk 4713
kind 4701
local, printing 4701
loss 4701*l*
marking ..... n. 5, 4705*c*
messenger, sent for 4701*d*
mutilated 4705*a*
name of candidate, when not printed 4700*d*
omission of name ..... n. 4, 4701
opening 4710*b*
opening packages of, 4701*c*; 4701*g*
packages 4701*c*
of, local 4701*g*
paper, State B. printed on ... 4701
papers, enveloped with 4713
"paster" 4705
petition to secure printing ... 4700*c*
poll clerks open 4701*h*
preparation of 4701; 4701*n*
by poll clerk for voter 4705*b*
printing 4700
who attends to 4701
printer, duties of 4701*b*
samples 4701*i*
use in booth ..... n. 5, 4704
sealing in packages .. 4701*c*; 4701*g*
secrecy, violation of 4701*n*
showing 4704
signing by clerk 4701*h*
special messenger for 4701*j*
squares on 4701
stamping 4704
decisions upon, n. 1 to 12, 4709*a*
State, printing 4700*c*; 4701
title upon 4700*c*
vacancy on, how filled 4701*a*
voter signing more than one petition, effect 4700*d*
Bartering vote 4768*dd*
Betting on 4685; 4768*aa*
with infant as to result 4768*y*
Blanks prepared 4691
liability of county for .... n. 2, 4679
Board of, adjournment forbidden 4708
attendance, prompt 4692
clerk of 4690

Elections (general) (*cont'd*) SEC.
duties as to township 4736
inspector is chairman 4694
meals for 4709
oath of 4692
administered, how 4694
result, not to state 4707
vacancy in, how filled 4692
who are 4688; 4689
Board of canvassers, certificate of 4718
declaration by 4718
duties of ..... 4717; and n. 1, 4717
meeting 4715
officers 4716
papers, defective 4720
tie vote 4719
who are 4715
Bond for person arrested, 4768*f*; 4768*i*
Booths, construction expense of 4701*n*
kind 4701*n*
number of voters in at one time 4704
preparation of 4701*n*
Boundaries, county, for change of ..... (R. S. 1881, § 4208)
Bribery by candidate 4768*ss*
clerk, of ..... (R. S. 1881, § 2010)
inspector, of .... (R. S. 1881, § 2010)
judge, of ..... (R. S. 1881, § 2010)
Buying vote 4768*rr*; 4768*ss*
Candidate bribing voter 4768*ss*
recount, may have 4738
threatening voter 4768*ss*
Canvass of votes, how made .. 4709*a*
decisions on ..... n. 1 to 12, 4709*a*
Cards containing instructions to voter 4701*i*
removing or destroying 4710*g*
Certificate, board of canvassers, by 4718
circuit clerk, by, 4721; 4723 to 4726
election notice, to 4679
congressman, as to 4728
contest over election .. n. 5, 4756
force of ..... n. 1, 4718
governor, as to 4729
judges, of 4712
lieutenant-governor, as to .. 4729
representatives, as to 4724
secretary of state to governor 4727
senators, of 4724
township, of 4736
Chairman of county central committee, duty 4700*b*
state central committee, duty, 4700*a*
Challenges, affidavit of elector, 4702
bribery, on account of 4768*t*
vote, when received 4702
who may be 4702

Elections (general) (*cont'd*) SEC.

Challengers, appointment 4700
approach to poles 4700
number..... 4702
pay of..... 4700
Chutes.....4701*n*
City, governed by general election law..... 4710*a*
See Elections (city).
Clerk of circuit court, ballots delivered to..... 4713
ballots delivers to inspectors, 4701*c*
bribery of.....(R.S.1881, § 2010)
certificates by, 4721, 4723 to 4726
election notice to 4679
recount, duties as to..4740 to 4742
Clerks of election, appointment, 4690
duties 4701*h*
instructs voter.....4705*b*
sworn in by inspector..... 4694
Closing..... 4697
proclamation of..... 4697
Commission by governor..... 4722
not necessary.....n. 2, 4721
prima facie evidence....n. 1, 4727
Complaint against bribers.....4768*c*
Congress, secretary of state certifies to..... 4728
Constitutional amendments, ballots for 4710*j*
Contest, affidavit, by whom made .....n. 1, 4758
sufficiency.....n. 2, 4758
appeal to supreme court 4768
circuit court, to 4762
ballots kept, to use in 4714
contestor and contestee 4743
county offices, contest as to.. 4758
appeal to circuit court.... 4762
duty of court..... 4763
commissioners to take testimony 4766
costs and fees.....n. 1, 4765
notice by auditor to clerk . 4759
to county commissioners 4760
to contestee..... 4760
subpœnas..... 4761
trial by county commissioners 4761
voters must testify 4764
demurrer.....n. 9, 4758
fraud.....n. 4, 4756; n. 8, 4757
ineligible candidate.....n. 1, 4757
injunction not proper ...n. 5, 4758
irregularities, when immaterial..... 4757
jury trial .....n. 2, 4763
judgment in 1136
legislators, contest as to..... 4747
cause for 4756
clerk's duty in 4753
depositions in..... 4748
sent to secretary of state, 4753

Elections (general) (*cont'd*) SEC.

to proper house 4754
when read 4755
justices, meeting and duty of 4752
powers of..... 4750
motion to dismiss ....n. 3, 4763
notice to contestee..... 4749
vacancies in commission.. 4751
municipal offices, contest as to 4767
oath of contestee.....n. 3, 4758
practice,...n. 2, 3, 4760; n. 3, 4756
question in.....n. 2, 4756
state offices, contest as to ... 4744
committee to try 4746
notice to contestee 4745
specifications as to 4744
statement of .....n. 13, 4758
township offices, contest as to 4758
vacancy pending 5565
voter may contest 4743
as a witness .....n. 1, 2, 4764
Contracts void 4768*n*
Counting.....4705*e*; 4709*a*
manner of 4710
mistake in.....n. 1, 4756
rules for .....n. 13, 4709*a*
voting after commencing ... 4711
who may witness..... 4711
County board of election, appointment 4700*b*
duty to prepare ballots.....4700*b*
pay 4700*b*
County election, special, how conducted 4710*l*
Day of holding..... 4678
Deceiving illiterate voter 4768*jj*
Defective ballots 4706
Defrauding voter.....4768*kk*
Deposit of ballot by inspector, 4705*c*
Destroying ballots....4701*m*; 4710*b*
ballot boxes 4768*nn*
poll books 4768*nn*; 4710*a*
returns 4768*ff*; 4710*a*
Device on ballots.....4700*c*
certified to county.....4700*g*
Discharge from custody, voter, when.....4768*g*
Disfranchisement of elector... 4681
Domicile defined .....n. 3, 7, 4680
Electioneering, officer of election may not.....4710*h*
Elector, disfranchising 4681
qualifications 4680
when does not lose right to vote 4683
Employe, refusing, time to vote, 4768*ll*
Employment of voter.....4703*b*
Entering election room unlawful.....4710*c*

Elections (general) (*cont'd*) SEC.
Execution against briber.....4758*m*
Expenses of, county pays..n. 1, 4735
False affidavit, penalty 4768*u*
Forms, preparation of 4691
Fraud at special election 4768*qq*
by officer 4768*ee*
Free and equal, must be..... 83
General, by ballot..... 94
when held.....94; 4678
Giving money for, by candidate, unlawful 4768*q*
Governor, certificate of vote for 4729
contest for.....(R. S. 1881, § 132)
member of state board of ...4700*a*
residence of .....n. 8, 4680
returns for.....(R. S. 1881, § 130)
special, may order..... 4732
Habeas corpus to release briber, 4768*c*
Hiring voters, illegal ..4768*cc*, 4768*r*
Holidays 4710*n*
Ignorant voter, preparing his ballot.....4705*b*
Illegal votes 4768*x*
Importing voters.....4768*aa*
Inducing voter to not vote 4768*s*
to re-sign petition 4768*oo*
Ineligible candidate, effect, n. 6, 4678
Inhabitant, who is .....n. 2, 4680
Injunction, not proper with which to contest.....n. 5, 4758
Inspector, additional 4689
administers oaths 4694
appointment..... 4689
ballots delivered to.....4701*g*
deposits in ballot-box 4705*c*
bribery of.....(R. S. 1881, § 2010)
chairmen of election boards are 4694
duty..... 4694
neglecting duty 4701*k*
oath as to ballots 4713
township trustees are..... 4688
Instructions to voters, 4701*i*; n. 6, 4704
Intimidating voter .. 4768*hh*; 4768*ll*
Judges, appointment 4688; 4689
bribery of ....(R. S. 1881, § 2010)
certificate of 4712
disqualification of 4688
officers are .....n. 1, 4715
who can not be 4688
Judgment against briber.....4768*f*
amount of.....4768*l*
Judicial notice taken of result of .....n. 2, 4678
Laws of construed liberally, n. 11, 4678
certain of, repealed..4768*o*; 4768*v*
Legislature can not fill an office .....n. 12, 4678
Lien of judgment against briber, 4768*k*

Elections (general) (*cont'd*) SEC.
Lieutenant-governor of, (R. S. 1881, § 129)
vacancy in office of .....n. 8, 4678
vote for verified 4729
Loaning money, when unlawful 4768*q*
Mandamus to compel count, n. 1, 4721; n. 1, 4726
Mariner, disqualified 85; 4682
Meals for election officers..... 4709
pay ..... n. 2, 4709
Method of voting 4704
Money, loaning, when unlawful 4768*q*
New county, as to, (R. S. 1881, § 4223)
transfer of territory, as to, (R. S. 1881, § 4229)
Nominations, acknowledgment of certificate of 4700*c*
certificate of 4700*c*
corrected, may be.....4700*f*
failure to file in time, n. 1, 4700*f*
preservation of 4700*e*
time of filing 4700*f*
convention, petition, effect..4700*d*
failure to make .....n. 4, 4700*c*
petition preserved 4700*ee*
publication of.....4700*h*
failure to make in time, n. 2 to 4, 4700*h*
when not made.....4700*i*
refusal to accept.....4700*i*
state certifies to county.....4700*g*
two parties nominating same person.....n. 5, 4700
vacancy, how filled.....4701*a*
when invalid .....n. 2, 4700*c*
Non-resident voting.....4768*z*
Notice by sheriff 4679
failure to give.....n. 3, 4679
proof of posting up.....n. 6, 4679
Oath of board..... 4692
administered, how..... 4693
challenged person, of, 4696*a*, 4702
failure of officer to take, effect.....n. 1, 4692
freeholder, of 4702
inspector, of.....4694, 4713
Object of act of 1889.....n. 2, 4704
Officers of, altering returns, 4768*ff*
appointment...4688 and n. 2, 4688
destroying returns 4768*ff*
disqualification, effect of, n. 4, 4688
duty of inspector..... 4694
electioneering forbidden 4710*h*
false entry, making of.....4768*ee*
tallies, making 4768, 4768*ee*
from different political parties.....n. 3, 4688
ineligibility, effect of ...n. 6, 4678
influencing voter.....4678*hh*

Elections (general) (*cont'd*) SEC.
legal vote, refusing 4768*gg*
marking ballot 4678*ii*
neglect of duty 4710*i*
opening ticket 4678*ii*
pay of 4730
qualifications 4689
related to candidate 4688
removal for cause 4688
tampering with ballots 4768*ee*
township trustee is 4688
voters, when may select 4689
Opening polls in city, when ... 4697
notice of 4697, 4699
petition to open at six a. m. 4697
proclamation of 4697
Paster ballot 4705
Perjury in 4703*a*
Petition to secure printing of ballots 4700*c*
withdrawing names from, n. 3, 4700*c*
Petition to open polls at six a. m. 4697
Place of voting 4686
Pleading, criminal, as to, (R. S. 1881, § 1749)
Polls, vacancy around 4700
who may approach 4700
Poll-books and forms 4691
destroying or losing 4768*ff*
false entries on 4768*ee*
Poll-book holder, appointment of 4700
approaches polls 4700
pay 4700
Precincts, boundaries changed, 4687
elector must vote in his own, 4698
establishment 4686
in city and town ..... n. 2, 4686
notice of change made 4687
re-adjustment ..... n. 3, 4687
size 4686
Proclamation of opening polls, 4697, 4699
of closing polls 4697
Purchasing votes 4768*a*
Railroad aid, see Railroads.
Re-count, candidate may have, 4738
adjournment of commissioners 4742
ballots kept 4742
certificate of 4741
circuit clerk, duty of, 4740 to 4742
commissioners for 4740
order of court for 4739
pay of commissioners 4742
petition for 4739
witnesses to 4740
Refusing to receive vote, penalty 4768*gg*
Registration of certain voters, 4698*a*
validity of law requiring, n. 1, 4698*a*

Elections (general) (*cont'd*) SEC.
Repeal of laws 4710*o*
Residence not lost, when 4683
losing ..... n. 4, 4680
Result announcing, illegal when 4707
Returns, altering 4768*ff*
destroying 4768*ff*
Revealing how elector voted, 4710*e*, 4710*f*
Rooms for, preparation of 4701*n*
kind 4701*n*
Rules of evidence 4768*e*
Sale of school lands, see Schools.
School officers, as to, see Schools.
Seamen 85, 4682
Secretary of state certifies, when 4727
Seizing ballot box 4768*mm*
Selling vote at 4768*dd*
county seat removal, for ... 4768*rr*
signature to petition 4768*pp*
railroad aid, for 4768*rr*
Senators, state, certificate of .. 4724
Sheriffs of election, appointment 4700
arrests, make 4700
duties 4700
how chosen 4700
pay of 4700
powers 4700
Soldiers disqualified 85; 4682
Soliciting illegal vote 4768*aa*
Special, conducted how 4734
congressional vacancy 4731
governor may order 4732
legislative vacancy 4731
notice by sheriff 4733
tie vote 4731
vacancy, to fill 4731
when held 4731
Stamps, distribution of 4701*c*
payment of 4701*c*
preparation of 4701*c*
removal from booth 4705*d*
voter delivers to clerk 4704
Stamping ballot 4704
State board of election commissioners, appointment 4700*a*
compensation of 4700*a*
duties 4700*a*
Stay of judgment against briber, 4768*l*
Student, right to vote ..... n. 6, 4680
Suit to recover penalty 4768*b*
Tally-papers and certificates .. 4691
destroying or losing 4768*ff*
Ticket, opening or marking ... 4768*i*
false, furnishing 4768*j*
removing or destroying 4768*ee*
Tie vote 4719
validity of, law concerning, n. 1, 4719
Time of holding 4678

Elections (general) (*cont'd*) SEC.
if held on wrong day, void, n. 10, 4678
Toll, voter does not pay, (R. S. 1881, § 2895)
Town election, how held 4710*m*
Township, certificate of..... 4736
offices filled at 4735
rights of person elected 4737
special 4710*l*
votes, how counted 4736
when held 95; 4735
Township trustees, inspectors are 4688
Transcript in action against briber.....4768*f*; 4768*j*
Treasurer of state, residence of, n. 8, 4680
Trial of briber.....4768*h*
United States supervisors, n. 2, 4711
Vacancy, congressional, to fill, 4731
filling.....n. 4, 4679
legislative, to fill 4731
legislature can not fill..n. 12, 4678
pending contest, how filled, (R. S. 1881, § 5565)
resignation creates.....n. 5, 4678
when exists .....n. 3 to 9, 4678
when filled.....n. 3, 4, 4678
Void, when ..... n. 10, 4678
Voter, arrest, privileged from, 93, 4684
causing to re-sign petition, etc., 4768*oo*
challenged, who may be 4702
defrauding.....4768*kk*
furnishing wrong ticket to, 4768*jj*
hiring to vote or not 4768*cc*
importing illegal.....4768*aa*
influencing by officer.....4768*hh*
intimidating 4768*ll*
marines disqualified as ...85, 4682
name announced 4704
entered 4704
numbered..... 4704
oath, when challenged..... 4702
officer menacing 4768*hh*
persuading 4768*hh*
qualifications of.....84, 4680
registration of.....95; 4698*a*
residence effecting..... 86
must vote at 4698
seamen disqualified as 85, 4682
soldiers disqualified as....85, 4682
violence or threats, to influence 4768*ll*
Voting illegally.....4768*x*
more than once ...4768*bb*; 4768*qq*
non-resident 4768*z*
wrong precinct, in 4768*y*
When held 4678
Where to vote..... 4698
Witness to count 4711

Elections (general) (*cont'd*) SEC.
may protest..... 4711
refusing to admit..... 4711
re-count, to 4740
Use of money by candidate ...4768*p*
Using violence, threats or restraints.....4768*ll*
Warrant, issued when 4768*d*

Electric light
Assessment of damages because of poles in street.....3229*g*
Constitutionality of law, n. 1, 3229*g*
Grant of use of street, 3229*g*; 3229*e*
Poles in street.....n. 12, 66; 3229*d*
Use 3229*c*
Wires may be laid in street, n. 12, 66

Elevators
May be regulated by city, n. 5, 3155

Embezzlement
Clerk by filling out blank warrants.....n. 5, 3068
New bonds in place of old embezzled, may be issued, n. 1, 3114
Sinking fund misapplied.....3126*e*

Eminent domain
Annexation of territory is not exercising power of...n. 7, 3195
Assessment of damages must first be made .....n. 23, 66
Canal .....n. 1, 66
Cemeteries.....n. 18, 66
Cisterns in street .....n. 12, 66
Compensation a judicial question.....n. 9, 66
Constitutionality of act authorizing.....n. 19, 66
County seat .....n. 1, 66
Damages, must be first paid, n. 1, 66
ascertainment .....n. 3, 66
consequential .....n. 1, 66
measure .....n. 20, 24, 66
tender .....n. 4, 66
Ditch.....n. 1, 66
Electric wires ....n. 12, 66
Factory .....n. 1, 66
Franchise seized .....n. 1, 66
Gas pipes .....n. 12, 66
Highway .....n. 2, 66
Hydraulic works.....n. 1, 66
Markets .....n. 14, 66
Mills .....n. 1, 66
Monuments .....n. 12, 66
Parks .....n. 15, 66
Plank roads .....n. 1, 66
Pounds .....n. 13, 66
Private use .....n. 2, 66
Procedure .....n. 19 to 23, 66
failure of legislature to provide .....n. 22, 66
Purposes for which may be exercised.....n. 10, 66

Eminent domain (*cont'd*) SEC.
Railroad....n. 1, 13; 66
Right to exercise....n. 6, 66
School-houses....n. 17, 66
Sewers ...n. 12, 66; cl. 43, n. 5, 3106
State need not pay before taking.... 66
Statutory....n. 12, 66
Statute of limitations....n. 19, 66
Street, opening and vacation, n. 4, 7, 66
Telegraph....n. 1, 13, 66
Telephone....n. 1, 13. 66
Turnpike....n. 1, 66
Tender of damages must be made before seizure, n. 1, 4, 7, 66
must be in legal tender money....n. 4, 66
state need not first make.... 66
Use to which may be put, n. 8 to 11, 3167
Validity of law authorizing, n. 19, 66
Water-works....n. 1, 16, 66
pipes....n. 12, 66
See Damages.

Engine house
City may build....cl. 33, 3106
Execution, can not be sold upon, n. 4, 3200
Town may build.... 3343
bonds for, may issue.... 3343
how bonds sold.... 3344
tax for, may levy.... 3345

Engineer
See Civil Engineer and Fire Department.

Escape
Effect on judgment....n. 1, 3067
Offenders may be re-taken, n. 18, 3076

Escheats
Escheated land belongs to school fund.... 183

Estimates
Civil engineer makes.... 3073

Estoppel
Acquiescence in street improvement will be, n. 14, 21, 3164; n. 8, 3165; n. 3, 3357
Change of grade....n. 6, 3073
City appropriating land is estopped to deny title, n. 2, 3176
may be....n. 21, 3106
may be to enforce penal ordinance....n. 16, 3066
Failure to object to street improvement, n. 3, 3357; n. 13, 21, 3164
Water-works company using water of stream, cl. 26, n. 10, 3106

Estray fund SEC.
Belongs to schools....n. 4, 183
See Schools.

Evidence
Canal records may be used as, n. 2 to 4, 3068
Copies made by clerk of city are....n. 1, 3068
Grade, how proved....n. 6, 3073
Nunc pro tunc entry is....n. 1, 3068
Parol to show acts of council, n. 1, 3068
Printed city ordinances are... 3100

Excavation
Holes in street....cl. 18, n. 9, 3106

Execution
Against principal and replevin bail.... 3067
Engine house can not be sold upon....n. 4, 3200
Exemption, firemen's pension is....3203*r*
Real estate of city can not be sold upon....n. 1, 3111
Sale upon.... 3067
Stay of in town.... 3347
in city....3067; 3217
Water-works can not be sold upon....cl. 26, n. 9, 3106

Executor
Taxing in city or town.... 3264
See Taxation.

Exemption
Engine house is from sale, n. 4, 3200
Fireman's pension is exempt from sale on execution ...3203*r*
Realty of city or town is from sale....n. 1, 3111
See Taxation.

Exhibition
City may regulate....cl. 15, 3106
fine arts....cl. 16, 3106
musical, on street....cl. 1, 3106
shows....cl. 15, 3106
theaters....cl. 15, 3106

Expulsion
Aldermen may be....3053, 3101
Councilmen may be.... 3101
Procedure....n. 1 to 7, 3100

Fairs
City may purchase real estate for....cl. 45, 3106

Fast driving
City may prohibit, cls. 17 and 19, 3106
Town may prohibit....n. 1, 3327

Fees SEC.
Attorney for city, 3078 and n. 1, 2, 3078
when fine worked out .. n. 5, 3067
Civil engineer .....n. 4, 3073*a*
Clerk of circuit court for filing election statement..... 3035
Clerk of city for copies..... 3068
Constable 3077*a*
Ferries..... 3103
General law required to create, 118
Judge of city must relinquish, 3063
Justice of the peace.....3063*a*
Marshal of city 3077, 3077*a*
Mayor ...3063 and n. 2, 3063; 3063*a*
pays to city treasurer..... 3063
release, form..... 3063
relinquishes 3063
Treasurer of city, 3094 and n. 1, 3094
See Taxation.

Females
Assisting in making an arrest, n. 8, 3076
Imprisonment in home for friendless women 6240
Sale of property on precept... 3165
School officers may be..... 4540
Working out fine, 3067 and n. 1, 3067

Fences
Damages for taking.....n. 20, 66
Partition, regulated by city, cl. 41, n. 1, 3106

Ferries
Abandonment.....n. 3, 3103
Board of county commissioners usually control .....n. 3, 3103
Charging for use of wharf, cl. 34, n. 2, 3106
City may control..... 3103
Fees and charges..... 3103
License.....3103 and n. 3, 3103
Non-user .....n. 3, 3103
Power of city to regulate n. 2, 3103
Town may not damage 3338

Filth
Cleaning up in city.....cl. 10, 3106

Finances
Council controls 3106

Fine arts
Exhibition under.....cl. 16, 3106

Fines
Actions for 3066
City may impose..... 3155
Driving on sidewalk in town, 3361; 3362
Home for friendless women, when gets..... 6243
gambling, fines, gets..... 6244
Limit in city..... 3155
Mayor pays to city treasurer.. 3062

Fines (*cont'd*) SEC.
Paid into city treasury..... 3062
Schools get..... ... 183
Town may impose 3346
limit 3346
remitting 3346
See Penalties.

Fires
Arrests at, by chief of fire department....3201 and n. 2, 3201
Buildings, city or town may destroy to prevent fires, 3203 and n. 1, 3203
payment for..... 3203
Combustibles removed ...n. 13, 3106
Dangerous material, keeping, town may regulate.....cl. 3, 3333
Destruction of buildings at common law .....n. 1, 3203
Failure to extinguish, city not liable, cl. 26, n. 4, 9, 3106; n. 1, 3200
Inhabitants of town may be compelled to extinguish, cl. 3, 3333
Limit, city may prescribe, cl. 32, 3106
town may prescribe..... 3335
Out fires, town may prevent, cl. 3, 3333
Prevention of..... 3199
Preventing by destruction of building, cl. 32, n. 1, 3106; n. 1, 3203
Regulations to prevent..... 3199
Scuttles in roof..... 3199
Straw, storage in large quantities prevented.....note, 3192
Town may prevent ..cl. 3, n. 2, 3333

Fire-arms
City may regulate use of, cl. 3, 3106
Town may regulate use of, cl. 6, 3333

Fire apparatus
Bequest to city to purchase, n. 3, 3200
City may protect.....cl. 30, 3106
Contract for .....n. 2, 3200
Purchase by city or town, n. 2, 3200
of house .....cl. 33, 3106
Regulation of.....cl. 30, 3106
Sale on execution.....n. 4, 3200
Town ma purchase, cl. 3, n. 1, 3333; n. 2, 3342
Voluntary association, city may purchase for.....n. 3, 3200

Fire board
Illegal .....n. 1, 3054; n. 1, 3201

Fire company
Hook and ladder 3200
Liability of city for .....n. 1, 3200
Organization in city..... 3200
town .....cl. 3, 3333
Voluntary, city may purchase apparatus for .....n. 3, 3200

Fire department SEC.
Act of 1889 invalid.....n. 2, 3043
Apparatus for..... 3200
Arrest of person refusing to assist .....n. 2, 3201
Bequest to city.....n. 3, 3200
Chief, appointment..... 3198
assistants 3201; 3098
authority can not be limited, n. 1, 3201; 3054
duties 3201
powers 3201
term 3198
Councilmen members of..... 3198
Failure to have, city not liable for loss by fires.....n. 4, 3106
Fire board, illegal...3054; n. 1, 3201
Fire companies..... 3200
Fire patrol, control of 3778
House for engines, city may purchase.....cl. 33, 3106
Hook and ladder companies .. 3200
Inspection of buildings..... 3798
Liability of city for acts....n. 1, 3200
Privileges of firemen 3202
Rules and regulations prescribed by council 3200
Voluntary association, city may purchase apparatus for, n. 3, 3200

Fire engines
City may protect.....cl. 30, 3106
purchase, n. 13, 3106; n. 1, 3155; n. 3, 3200
regulate .....cl. 38, 3106
Town may purchase, cl. 3, n. 1, 3333

Fire limits
City may establish, cl. 32, 3106; n. 4, 3155
Forms .....cl. 32, 3106
Ordinance how construed, cl. 32, n. 1, 3106
Town may establish, cl. 3, n. 4, 3333; 3335

Firemen
City liable for injury to, by reason of defective street, n. 2, 3202; n. 18, 3161
Exemption from jury and militia duty.....3202; 3202*a*
city tax 3202*c*
military duty, exempt from.. 3202
Injury to, by reason of defective street.....n. 18, 3161; n. 2, 3202
Pay.....n. 1, 3202*c*
Pension fund of exempt from seizure 3203*r*
Privileges 3202

Fireman's insurance
Act of 1891, how construed....3203*s*
Assessment of firemen for fund, 3203*k*
Beneficiaries 3203*m*; 3203*p*
Board of fund.....3203*d*

Fireman's insur'nce (*con'd*) SEC.
election 3203*e*
Deficiency in fund 3203*n*
Election of trustees 3203*f*
Examination of firemen.....3203*m*
Exemption of fund from seizure, 3203*r*
Fines paid into fund.....3203*j*
Forms, see Forms.
Payment of fund to trustees...3203*l*
Pension fund.....3203*c*
Pensions, how paid.....3203*q*
rate 3203*o*
President of board, how elected, 3203*f*
Report, board reports of firemen to trustees....3203*l*; 3203*g*
of foreign insurance companies 3203*a*
of taxes collected.....3203*h*
of trustees.....3203*l*
penalty for failure to report, 3203*b*
Revoking license of foreign insurance company.....3203*b*
Secretary, election of.....3203*f*
Tax on foreign insurance companies 3203*a*

Fire patrol
Appointment and control..... 3778

Fire wardens
Appointed by city council 3198
town trustees, cls. 3, 10, 3333; 3329
member .....cl. 3, 3333
Councilmen are *ex officio* 3198
Powers in city..... 3198
in town.....cls. 3, 10, 3333
Town trustees are 3329

Fire-works
City may prohibit.....cl. 3, 3106
Town may prohibit....cls. 3, 6, 3333

Fish
Sales of, regulated by city, cl. 29, 3106

Flagmen
Railroad may be required to keep .....cl. 42, n. 2, 3106

Forestalling
City may prevent .....cl. 29, 3106

Forfeitures
Action by city to recover 3066
Belong to school fund 183

Forms
Adoption of general law by old city 3039
Affidavit denying publication of ordinance 3064
for driving on sidewalk 3362
for issuance of bonds 3119
Appeal bond, from judgment.. 3067
survey.....3073*a*

Forms (*cont'd*) SEC.
Appointment of officer 3050*b*
Annexation by city, approval of plat..... 3196
consent of land-owner 3196
notice of proceedings..... 3196
order-book entry of proceedings 3197
resolution of annexation, 3195, 3196
Annexation of city and town, agreement 3234
election notice 3235
election certificate 3238
resolution of consolidation.. 3238
Bid for sewer.....cl. 43, 3106
Bond, affidavit for issuance ... 3119
approval..... 3095
contractor's .....cl. 43, 3106
coupon 3119
form 3119
journal entry authorizing... 3119
official..... 3095
ordinance authorizing issuance..... 3095
request for affidavit 3119
to state to secure arms..... 3227
Breaking quorum, indictment for 3097*a*
Cemetery, deed to city 3286
acceptance of deed 3287
notice of filing petition 3286
order for deed 3286
petition for deed 3286
petition for removal of dead, 3290
Clerk's monthly report..... 3099
Commitments 3066, 3067
Court, creating city court 3204
Coupon 3119
Complaint, failure to accept election 3049
failure to serve on election board..... 3034
indorsement upon 3066
on town ordinance..... 3347
to collect drain assessment, 3221*cc*
to collect street assessment, 3165*a*, 3360, 3366
to recover penalty..... 3066
Deed of city 3113
to city..... 3286
Deputy, appointment of, approved 3043
Disannexation of territory, acceptance by land-owner .. 3248
notice of proceedings..... 3247
order on petition..... 3247
petition 3248
resolutions upon.....3247, 3248
Dissolution of city, order for.. 3130
petition for 3130
summons upon..... 3130
Dissolution of town, forms.... 3318

Forms (*cont'd*) SEC.
Docket, entry of trial 3066, 3347
transfer of to justice of peace, 3066
Drainage by city, acceptance of assessment by land-owners 3221*hh*
appeal from assessment....3221*bb*
appointment of appraisers ..3221*z*
assessment 3221*cc*
bond of contractor 3221*cc*
complaint on assessment...3221*cc*
contract.....3221*cc*
error corrected.....3221*bb*
journal entry of, approval, 3221*z*; cl. 2, 3106
motion for re-assessment ..3221*bb*
notice of appointment, 3221*z*, 3221*a*
notice of assessment, 3221*cc*, 3221*dd*
notice of filing petition 3221*aa*
notice to land-owners 3221*z*
notice of letting contract ...3221*cc*
order-book entry.....3221*aa*
ordinance for drain ....cl. 2, 3106
petition to circuit court.....3221*z*
remonstrance 3221*aa*
report of committee, 3221*z*, 3221*gg*, 3221*aa*
report of street commissioner.....cl. 2, 3106
resolution for survey...cl. 2, 3106
survey.....3221*z*
trial and establishment 3221*bb*
Election, certificate of, 3095, 3047, 3048, 3311
certificate of inspectors, 3047, 3310
certificate of town inspectors, 3310
certificate of tie vote 3047
declaration of result 3047
election of city officers..... 3098
election of town officers 3309
notice to officer of his election 3048
notice for first city election . 3037
notice of special election ... 3047
notice of town election 3037
notice to fill vacancy 3043
notice to inspectors of appointment 3048
sinking fund commissioners, 3126*b*
special election ordered 3047
tie vote, certificate of..... 3047
tie vote, notice of election... 3047
tie vote, order for new election 3047
vacancy in office of councilmen..... 3043
Execution 3067
levy of 3067
Firemen's insurance, certificate of election.....3203*e*
election notice 3203*e*

Forms (*cont'd*) SEC.

election return 3203*e*
oath.....3203*c*
Fire limits .....cl. 32, 3106
Gas, resolution to light street, cl. 28, 3106
Grade ordinance 3358, 3073
acceptance of plan 3073
ordered..... 3073
report of plan..... 3073
Incorporation of city, affidavit showing result of election, 3035
appointment of election board 3033, 3034
approval of marshal's appointments 3031
ballot, form 3035
census..... 3032
complaint against officer.... 3034
journal entry of..... 3035
journal entry on petition.... 3031
marshal's census return 3032
notice of election..... 3033
old city adopting general law 3039
order for an election ...3033, 3031
order for census..... 3031
order for first city election .. 3037
petition for election 3031
plea attacking incorporation, 3036
ratification of marshal's appointment 3032
return of result of election.. 3035
wards 3037
warrant to town marshal to take census 3031
Incorporation of town, affidavit of posting notice..... 3296
notice of filing petition..... 3296
oath..... 3300
order incorporating..... 3201
petition..... 3296
return of result of election.... 3301
Justice of the peace, appointment of.....3347*a*
assessment roll 3151*a*
Levee, estimate.....3151*a*
notice to commissioners....3151*a*
notice for contract.....3151*b*
notice, by clerk.....3151*a*
notice of appeal.....3151*a*
order for estimate of cost ..3151*a*
ordinance establishing 3151*a*
report of commissioners 3151*a*
resolution of reference.....3151*a*
License, dog 3068
general..... 3068
market 3068
Marshal's census return 3032
return on warrant 3066
sale..... 3067
Meetings of council, resolution fixing time for 3096

Forms (*cont'd*) SEC.

Mittimus 3067
Notice, abatement of nuisance, cl. 35, 3106
change of ward boundaries..3038*a*
nuisance.....cl. 35, 3106
sale of bonds 3119
to holders of city orders.... 3082
Nuisance, notice to abate, cl. 35, 3106
Oath, official..... 3049, 3095
Officer, removal of..... 3101
Order of business..... 3096
Ordinance, appropriation..... 3105
board of health, establishing, cl. 35, 3106
bonds, authorizing issue of.. 3095
emergency clause 3100
enacting clause 3100
publication clause 3100
salary 3105
street railway..... 4154
Parks, acceptance of report....3292*o*
appeal bond 3292*o*
appointment of commissioners.....3292*l*
certificate of appointment...3292*l*
commissioner's report.....3292
notice to land-owners 3292*l*
oath of witness.....3292*m*
oath of commissioners 3292*l*
report of commissioners....3292*n*
resolution of appropriations.3292*l*
transcript.....3292*o*
Park commissioners, bond 3292*t*
election.....3292*s*
notice to.....3292*s*
oath.....3292*t*
report.....3292*x*
vouchers 3292*x*
Petition to sell square....cl. 48, 3106
Plat, approval.....3253*a*
acknowledgment 3376
affidavit to 3391
clerk's certificate 3253*a*
order adopting..... 3391
petition 3253*a*
reference to committee.....3253*a*
report and adoption.....3253*a*
President *pro tempore*, appointment of..... 3096
Public square, sale of....cl. 48, 3106
Quietus 3080
Railroad, election for aid to... 4089
petition to aid 4088
street-railway ordinance.... 4154
Real estate, sale by city 3113
Receipt by clerk 3080
for cancelled bonds..... 3083
for license fee..... 3322
Recognizance..... 3066
Register of orders..... 3069
of receipts 3069
of tax sale..... 3092

Forms (*cont'd*) SEC.
Release of fees by mayor..... 3063
Report, clerk's monthly 3069
drainage commissioners...3221*gg*
of firemen, number 3203*h*
mayor's..... 3062
street commissioner's 3074
taxes, for firemen's insurance,3203*h*
Sewer (*city*).
apportionment of cost..cl. 43, 3106
notice to contractors.. cl. 43, 3106
ordinance..... cl. 43, 3106
Sewer (*town*).
assessment..... 3397
appointment of appraisers .. 3393
complaint to collect assessment 3400
notice by treasurer 3398
report 3393
Shade-tree ordinance..... 3229
cutting, indictment 3229*a*
injuring, indictment.....3229*a*
Sidewalk, affidavit for driving upon 3362
Sinking fund commissioner's bond 3126*b*
certificate of election.....3126*b*
election.....3126*b*
oath 3126*b*
report 3126*c*
report of treasurer.....3126*d*
Square, sale of.....cl. 48, 3106
Street improvement (*general law for city*).
acceptance of bid..... 3162
advertisement for bids 3162
affidavit for precept 3165
appeal bond..... 3165
bid, and acceptance 3162
bond for appeal 3165
bond with bid 3162
complaint to collect assessment 3165*a*
contract 3162
deed on sale..... 3165
estimate of cost 3073
estimate of work performed, 3164
estimate, copy of, by clerk .. 3164
estimate, resolution allowing, 3164
notice of issuance of precept, 3165
notice of sale under 3165
ordinance ordering 3162
petition for 3162
petition for passage of ordinance 3162
precept..... 3165
precept, order for..... 3165
precept, notice of issuance .. 3165
precept, notice of sale under, 3165
precept, certificate of 3165
remonstrance 3162
transcript on appeal 3165
Street improvement (*Act of 1831*).

Forms (*cont'd*) SEC.
acceptance of agreement....3292*g*
agreement of land-owner, waiver 3292*g*
alley ordinance 3292*b*
asphalt ordinance 3292*b*
assessment 3292*f*
bid 3292*a*
bond 3292*h*
bond ordinance 3292*h*
coupon 3292*h*
declaratory resolution 3292*b*
estimate, final.....3292*f*
estimate referred to committee 3292*g*
estimate, acceptance of 3292*g*
estimate, report upon 3292*g*
estimate, objections to.....3292*g*
estimate, notice of reference, 3292*g*
estimate placed on tax duplicate 3292*g*
estimate, resolution 3292*g*
gutter and sidewalk ordinance.....3292*b*
land-owners' objections 3292*g*
notice of intent to improve, 3292*b*
notice of reference of estimate 3292*g*
order referring report 3292*g*
petition for 3292*a*
sidewalk and gutter ordinance.....3292*b*
sidewalk and street ordinance 3292*b*
street and sidewalk ordinance,3292*b*
tax duplicate 3292*i*
Street improvement (*town*).
advertisement for bids..... 3364
bid 3359
bond 3359
contract 3359
complaints to collect cost, 3360; 3366
estimate 3366
ordinance for.....3363; 3364
petition for street 3363; 3364
petition for sidewalk...3363; 3364
report of marshal..... 3359
working upon, order for 3367
Street opening (*city*).
appeal bond..... 3180
answer on appeal 3180
appointment of commissioners 3166; 3167
appropriation, resolutions for, 3174
certificate of appointment... 3166
claim for damages..... 3169
judgment 3180
notice 3180
notice of benefits assessed ... 3177
notice to city attorney, 3183; 3182
notice of clerk to commissioners..... 3173

Forms (*cont'd*) SEC.
notice of clerk to land-owners, 3174
notice of commissioners to court 3173
notice to guardian..... 3173
notice to non-residents 3183
notice to unknown owners .. 3183
oath of commissioners..... 3166
protest of land-owner 3168
report of committee 3167
report of commissioners 3168
report of damages..... 3171
report on appropriation 3171
report referred back to commissioners 3174
report on re-assessment..... 3174
resolution of expediency.... 3167
resolution of appropriation.. 3174
subpœna..... 3269
transcript..... 3180
treasurer's record 3177
verdict 3180
Street opening (*town*).
petitions for..... 3368
Street vacation (*city*).
agreement to change 3190
board of petitioners 3184
journal entry on agreement, 3190
notice to land-owners 3185
notice to non-residents 3183
notice to unknown land-owners 3183
petition..... 3184
report of city commissioners, 3186
resolution adopting report.. 3187
resolution of vacation ..3184, 3187
Street vacation (*town*).
consent to vacation..... 3382
notice of filing petition..... 3379
order for..... 3380
petition for.....3379, 3380
Street railway ordinance 4154
Subpœna 3066
Survey, adoption of.....3249, 3293
affidavit to town survey 3295
appeal bond 3073*a*
order for 3249
Tax certificate of sale 3091
installment resolution 3160*a*
levy 3157
warrant for city 3070
warrant for town..... 3350
Town, appointment of officers, 3312
complaint on ordinance 3347
name, petition to change ... 3384
name, notice of petition 3384
name, order changing 3384
oath of officer..... 3310
receipt of license fee..... 3322
receipts and expenditures .. 3323
treasurer's settlement..... 3322
vacation 3383
Transcript, caption..... 3068

Forms (*cont'd*) SEC.
certificates to 3067, 3068
Treasurer's extra bond 3345
monthly report 3083
Venire 3066
Ward boundaries 3037, 3038*a*
petition for new..... 3088
Warrant on city treasurer 3069
Warrant for violation of ordinance 3066, 3347
for collection of taxes ..3070, 3350
Water-works (*city*).
acceptance of commissioner's report 3269
appeal bond..... 3269
appointment of appraisers .. 3266
appropriation..... 3266
election notice 3265
election order..... 3265
election return..... 3265
notice to commissioners 3266
notice of election..... 3265
notice to land-owner 3266
oath of commissioners..... 3266
order for an election 3265
ordinance establishing board, 3270
petition for an election 3265
report of commissioners.... 3267
Working on streets, town order for..... 3367

Fowls
Running at large.....cl. 21, 3106

Free gravel roads
Law applies to city and town, n. 3, 3161

Freshets
City must provide for.....n. 9, 3106

Fuel
City may regulate sale of, cl. 31, 3106
Town provides for schools, cl. 17, 3333

Funding
City having debt of $30,000 and over 3125
tax levy 3126
City of 15,000 voters....3116 to 3119
limit of debt 3119
City of less than 16,000 voters, 3230
City with 16,000 voters, 3120 to 3124
limit 3121
limit of tax levy..... 3122
Town of less than 16,000 voters, 3230

Gambling
Fines and recognizance forfeited, where paid 6244, 6245
Houses suppressed .....cl. 9, 3106
Instruments of destroyed..cl. 9, 3106
Minors .....cl. 14, n. 2, 3106
Prohibited .... n. 5, 3155, cl. 9, 3106
Town may prohibit .....cl. 6, 3333
What is ..... cl. 9, n. 1, 3106

Games SEC.
Regulation by council ...cl. 14, 3106
by town .....cl. 7, 3333

Garbage
removal.....3226; cl. 22, n. 2, 3106
contract for..... 3226

Garden
Dedication ..... cl. 45, n. 4, 3106

Gas
City may build....cl. 28, 3106; 3162
Contract concerning, cl. 28, n. 3, 3106
Cost can not be assessed upon adjacent lot ....cl. 28, n. 4, 3106
Exclusive grant of use of streets .....cl. 28, n. 5, 3106
Lighting streets of city..cl. 28, 3106
of town..... 3336
Monopoly.....cl. 28, n. 5, 3106
Natural gas regulations 3229*b*
Negligence, city liable for, cl. 28, n. 8, 3106
Pipes may be laid in street, n. 12,66, 3110; 3110*a*; n. 5, 3328
burden on easement, is not, cl. 28, n. 6, 3106
consent of city or town necessary.....cl. 28, n. 7, 3106
natural gas pipes in street, cl. 28, n. 9, 3106
pipes beyond city limits 3110*b*
Resolution to light city with gas .....cl. 28, 3106
Tax for lighting streets in town, 3336
Works, city may build...cl. 28, 3106

Gates
Damages for taking.....n. 20, 66
Railroad may be required to keep .....cl. 42, n. 2, 3106

General welfare clause
Animals at large, may restrain, n. 4, 3155
Assault and battery, prohibiting .....n. 5, 3155
Bawdy houses, suppressing, n. 3, 3155
Buildings, when dangerous n. 1, 3, 3155
Cruelty to animals, prohibiting, n. 4, 3155
Dangerous buildings ...n. 1, 3, 3155
Distillery slops, regulating sale of.....n. 3, 3155
Elevators, regulating.....n. 5, 3155
Fire limits .....n. 4, 3155
Fire-engine .....n. 1, 3155
Gambling houses .....n. 5, 3155
Gunpowder .....n. 1, 3155
Health .....n. 2, 3155
Hospitals .....n. 1, 3155
House of ill-fame .....n. 5, 3155

General welfare clause (*cont'd*) SEC.
Implied powers.....n. 7, 3155
Incidental powers.....n. 13, 3106
Laundries.....n. 4, 3155
Levy of taxes.....n. 5, 3155
License.....n. 3, 5, 6, 3155
Liquor destroyed .....n. 6, 3155
Markets.....n. 6, 3155
Meat license .....n. 3, 3155
Mutilation of trees.....n. 3, 3155
Oils.....n. 1, 3155
Ordinance, sufficiency of..n. 9, 3155
Pawn-brokers .....n. 8, 3155
Powers, generally ....n. 1 to 9, 3155
implied .....n. 7, 3155
incidental .....n. 13, 3106
Profane language.....n. 5, 3155
Renting property.....n. 5, 3155
Rescuing prisoner .....n. 4, 3155
Sale of liquor.....n. 1, 3155
of second-hand clothing, n. 5, 3155
Saloons open at night.....n. 4, 3155
Show-boards .....n. 3, 3155
Signs .....n. 3, 3155
Snow and ice.....n. 3, 3155
Sunday shops .....n. 3, 3155
Straw, storing .....n. 1, 3155
Tax levy .....n. 5, 3155
Trees, preservation of.....n. 3, 3155
Vagrants.....n. 4, 3155
Water-works .....n. 6, 3155
Wooden buildings .....n. 4, 3155

Gifts
City may receive for poor, n. 1, 3115
Legalized.....3224*a*

Governor
Inspects home for friendless women 6242
Member of state board of review 6401*a*
Signs commissions 228

Governor's circle
Can not be sold 231

Grade
Acceptance of plan..... 3073
Changing and effect .....n. 1, 3073
Changed more than once..n. 2, 3161
Damages caused by change, n. 20, 21, 66; n. 1, 3170
Establishment, who does, n. 10, 3070
Kind in cities .....n. 4, 3073
Ordinance for..... .....3358; 3073
Proof of grade.....n. 6, 3073
Publishing not necessary..n. 7, 3073
Report of committee upon 3073
Sufficiency..... 3073

Grand jury
Inspects work-house 6234

Guardians SEC.
Taxing in cities and towns.... 3264
See Taxation (general).

Gunpowder
Regulating sale and storage, n. 1, 3155; cl. 11, 3106
Storing .....n. 4, 3155
Town may regulate .....cl. 3, 3333

Hacks
Rates, city may prescribe, cl. 36, n. 1, 3106
Regulations, city may make, cl. 12, 3106, and n. 1, 2, 3106
Stands for .....cl. 36, n. 1, 3106

Hand-organs
City may regulate or prohibit, cl. 1, 3106

Harbors
Appeal from assessment 3140
Appraiser's report..... 3137
Appropriation of land for, 3134; 3135
Assessments 3141
Benefits are liens 3141
City may improve.....cl. 34, 3106
contract 3131
Condemnation proceedings ... 3136
Construction..... 3133
Contract for construction 3131
Damages assessed 3138
Estimate of cost..... 3134
Foreclosure of lien 3141
Improving .....cl. 34, 3106
Liens, benefits assessed are.... 3141
foreclosure 3141
Map..... 3134
Notice of appraisement of benefits 3137
Possession of condemned lands, 3139
Railroad crossing 3134
Regulations for 3142
Repairing, cl. 34, 3106; 3131; 3142 to 3150
Report of appraisers..... 3138
Tender of damages 3139
Widening..... 3131
Work on..... 3132

Hawking
Regulating and restraining, cl. 23, 3106

Hay
Regulating sale of.....cl. 31, 3106

Health
Bills of mortality.....cl. 25, 3106
Cast-off clothing....cl. 24, n. 1, 3106
Cattle excluded from city, cl. 35, n. 2, 3106
Contagious diseases .....cl. 24, 3106
Council has charge of, cls. 2, 4, 10, 22, 3106

Health (*cont'd*) SEC.
Diseases, contagious, may suppress .....cl. 24, 3106
Drainage of city, to preserve, cl. 2, 3106
Filthy water accumulated near house .....n. 33, 3161
Garbage .....cl. 22, 3106
Hogs excluded from city, cl. 35, n. 2, 3106
Hospitals .....cl. 24, n. 1, 3106
Infectious diseases.....cl. 24, 3106
Pest-house .....cl. 35, n. 2, 3106
Pure water, city may provide, cl. 35, n. 2, 3106
Regulations concerning...n. 2, 3155
Sale of milk.....cl. 35, n. 2, 3106
of second-hand clothing, n. 5, 3155
Slaughter houses....cl. 35, n. 2, 3106
Town may preserve .....cl. 4, 3333
trustees members of board of health 4993
Unwholesome substances, removal .....cl. 22, 3106
Vacination.....cl. 35, n. 2, 3106
See Board of Health.

Heating pipes
Laid in street 3110

Hedges
Damages for taking.....n. 20, 66

Highways
Alley is .....n. 5, 3161
Corporation to improve, 5040 to 5044
right of corporation 5044
Damages for taking.....n. 2, 66
Laying out, laws for, must be general 118
Opening in city.....3166 to 3194
in town.....3367 to 3384
Petition by abutting lot-owners to improve .....5040 to 5044
Private way .....n. 2, 66
Sidewalk is.....n. 5, 3161
Street is .....n. 5, 3161
Vacating in city .....3166 to 3194
in town.....3367 to 3384
Working in city 3156*a*
in town..... .. 3367

High-water mark
City can not define, cl. 34, n. 2, 3106

Hogs
May be excluded from city, cl. 35, n. 2, 3106

Home for friendless women
Accounts of mayor's fines..... 6246
City may establish 6240
Establishment 6240
Expenses reported..... 6247
Females imprisoned in 6240

Home for friendless women (*cont'd*) SEC.
Fines, certain ones, receives, 6243, 6244, n. 3, 183; n. 9, 3062
Governor may inspect..... 6242
Imprisonment, law governing, 6241
Inspection..... 6242
Judgment confining female in, 6241
Mayor's account of fines..... 6246
Private institution used by city or town..... 6240
Receipts of fines reported 6247
Recognizances, when paid to.. 6245
Reports of mayor 6246
of trustees 6247

Hook and ladder companies
May be formed in cities 3200
Regulations for .....cl. 30, 3106

Horses
Running at large.....cl. 21, 3106
speed of .....cls. 17, 29, 3106

Hospitals
City may build, cl. 24, n. 1, 3106; cl. 33, 3106
General welfare clause does not effect .....n. 1, 3155
Gift to may be received by city.....n. 1, 3115
Pest house ..... cl. 35, n. 2, 3106
Purchase of real estate for 3115*a*

House of ill fame
Beyond city limits, n. 2, 3154; n. 1, 3106
Licensing ..... cl. 4, n. 1, 3106
Prohibited by city, cl. 9, 3106; n. 5, 3155
by town .....cl. 6, 3333
Proof of .....cl. 9, n. 4, 3106
Renting.....n. 5, 3155

House of refuge
City may build.....cl. 33, 3106

Hucksters
Definition.....cl. 23, n. 2, 3106

Humane inspector
Affidavit, files.....3221*u*
Appointment 3221*p*
request for.....3221*q*
Duty 3221*r*
Pay 3221*s*; 3221*p*
Powers 3221*t*
Repeal of laws 3221*v*

Hydraulic company
City may aid..... 3153

Ice
On sidewalk .....cl. 18, n. 9, 3106

Idiots SEC.
Realty of may be appropriated, 3173
street improvement over.... 3165

Ill fame
Houses of.....cl. 9, 3106
See Houses of Ill Fame.

Immorality
City suppresses .....cl. 7, 3106
Town suppresses ..... cl. 6, 3333

Impeachment
Officer may be 158
Procedure.....notes, 3101

Impounding
Power of city .....cl. 27, 3106
Power of town .....cl. 5, n. 1, 3333

Imprisonment
City may enforce, 3161; cl. 44, 3106; 3062; 3067
Female .....n. 1, 3067
Judgment essential .....n. 1, 2, 3067
Length of time limited....n. 1, 3067
Mayor may inflict..... 3062
Penal ordinance so enforced .. 3067
Statute authorizing is valid, n. 1, 3067
Town may enforce 3347
Work-house used for .....n. 4, 3067
Working out fine and costs, n. 3, 5, 3067

Incorporation (city)
Action against officer for failure to serve at election, n. 3, 3034
Affidavit showing result of election 3035
Amendments to statutes applicable to .....n. 5, 3031
Ballot 3035
Ballot-box 3034
Census, marshal takes 3031
ordered by town..... 3031
when not necessary 3031
within what time must be taken..... 3032
Collateral attack on proceedings .....n. 17, 3066
Complaint against election officers 3034
Constitutionality of law...n. 2, 3031
affidavit as to return..... 3035
Date of incorporation .... n. 1, 3036
Election, board of town trustees orders 3033
ballots..... 3035
ballot-box..... 3035
board of election 3034
clerk of election..... 3034
clerk refusing to serve, fined, 3034
common council of town performs..... 3042

Incorporation (city) (*cont'd*) SEC.
costs ..... n. 1, 3036
failure to carry ..... n. 2, 3035
general law governs, n. 2, 3034; n. 1, 3035
inspectors, how chosen 3034
inspectors, number 3033, 3034
inspectors must serve..... 3034
inspector is an officer ...n. 2, 3035
judges must serve 3034
judge is an officer.....n. 2, 3035
majority of ballots cast sufficient.....n. 2, 3035
manner of holding..... 3035
notice for..... 3033
officers, appointment..... 3034
order for..... 3033
polls, number.....n. 1, 3034
return of..... 3035
return, where recorded..n. 4, 3035
sufficiency of election..... 3035
Election (*first*) after incorporation 3037
notice of.....3037
Forfeiture of charter.....n. 2, 3036
Forms, affidavit of town board, 3035
appointment of election board 3033, 3034
approval of marshal's appointment 3031
ballot..... 3035
complaint against election officer 3034
inspector's statement 3035
journal entry 3031
notice of election..... 3033
order on petition 3031
order for election 3033
petition..... 3031
plea attacking incorporation, 3036
warrant to marshal..... 3031
General laws, must be under.. 212
presumed city incorporated under ..... n. 1, 3031
Injunction to restrain does not lie ..... n. 2, 3036
Inhabitants do not constitute city ..... n. 4, 3036; n. 3, 3096
number necessary 3031, 3033
Journal entry as to result of election 3035
Marshal's appointments ratified, 3032
census, takes..... 3032
Mayor can not order an election.....n. 8, 3031
Name of city ..n. 3, 3036; n. 1, 3031
Notice for election 3033
Officers of town, effect upon, n. 1, 3042
Old cities may adopt general law..... 3039
interest pays 3040
liabilities do not effect 3040

Incorporation (city) (*cont'd*) SEC.
officers 3041
order for..... 3039
ordinances..... 3041
rights of, not lost..... 3040
suits continued..... 3040
Ordinances of town continued in force.....n. 3, 3096; 3041
Penalty for failure to serve on election board..... 3034
Petition for incorporation 3031
number of signers question for town board .....n. 8, 3031
town board must act upon, n. 8, 3031
Property of town goes to city, n. 3, 3036
Presumption that city is incorporated under general law, n. 1, 3031
Record of result conclusive, 3035; n. 2, 3036
where made..... 3035
Rights and liabilities of town acquired by city .....n. 3, 3036
Special charter, can not have, 212; n. 6, 3031
Statement of election inspectors, 3035
Steps necessary 3031
Town can only become city, n. 7, 3031
Wards, form for.....3037
town trustees first make, n. 1, 3037
When city becomes incorporated..... 3036

Incorporation (town)
Appeal from order.....n. 5, 3297
Application to board of county commissioners 3296
Board of county commissioners' duties ....3031; 3296; n. 3, 3297
of election, as to 3300
Census 3294
made public..... 3295
Collateral attack upon proceedings ...n. 8, 3293; n., 3331; 3301
Debts, when old town incorporates..... 3317
Declaration as to..... 3301
Districts..... 3302
Election, board of 3300
ballots..... 3301
conduct of.....n. 1, 3301
expenses.....n. 1, 3301
notice of..... 3298
oath concerning notice 3300
order for..... 3297
petition for 3296
polls, how long opened 3299
report of inspectors..... 3301
General laws necessary for.... 212

Incorporation (town) (*con'd*) SEC.
Hearing by county commissioners 3297
Judicial notice of town, n. 6, 7, 3297; n. 2, 3301
Legalizing .....n. 9, 10, 3293
Map 3293
Name 3297
Oaths of officers 3313
Old town adopting general law, n. 1, 3316
effect .....n. 2, 3317
Order of 3301
conclusive 3301; 3315
Petition for 3296
affidavit showing posting of notice 3296
notice of filing 3296
Polls, how long open 3299
Publication of 3295
School-house taken into, effect, n. 3, 4, 3301
funds .....n. 4, 3301
Survey 3293
affidavit of surveyor 3293
form 3293
made public 3295
oath attached 3295
Town within a town, n. 4, 3297; n. 6, 3293
Trustees, how chosen 3311
When incorporation complete, n. 3, 3301

Incumbering streets
City may prevent .....cl. 18, 3106
See Obstructions,

Indianapolis
Charter omitted, see Appendix.

Infant
Duty concerning in street opening 3173

Infectious diseases
Council may prevent....cl. 24, 3106

Infirmary for poor
City may build for poor and regulate 3115
Directors 3115
term 3115
Erection of 3115
Location of 3115
Maintenance 3115
Regulations of 3115

Inhabitants
Incorporation, do not constitute.....n. 3, 3096; n. 4, 3036
Power can not confer on corporation.....n. 3, 3096

Injunction
Aid to railroad may be enjoined .....n. 13, 3152

Injunction (*cont'd*) SEC.
Annexation of territory may be enjoined .....n. 2, 3, 3195
Cemeteries, use of enjoined, cl. 5, n. 1, 3106
Damages must be assessed and paid .....n. 2, 3170
dissolved on payment..... 3183
Grade changing.....n. 2, 3, 3073
Narrowing street .....n. 3, 9, 3161
Ordinance void, restraining enforcement, n. 10, 3066; n. 21, 3076
Railroad in street.....n. 7, 3161
Taxes illegal, collection restrained, n. 8, 3156; n. 6, 3157; n. 5, 3070
Street improvement, 3165; 3292*h*; 3292*j*
collateral attack .....n. 20, 3162

Inns
City may license and regulate, cl. 13, 3106

Insane
Duty concerning street opening, 3173

Installments
City tax is payable in.....3225*a*

Insurance
Public property in town may be insured .....cl. 12, 3333
See Firemen's Insurance.

Insurance company
City may tax..... 3156

Interest
Payable on city orders...3081; 3082
Rate .....3040; n. 1, 3082; 3118
Tax to pay 3156

Intoxication
Officer removed for 3226*b*
Town may punish.....cl. 6, 3333
See Liquors.

Jails
See Prisons.

Journal
Nunc pro tunc entry .....n. 1, 3068

Judge
See Court (City).

Judgment
Payment by work on street, n. 9, 3347
discharge of prisoner..... 3067
Railroad 3065
Rate allowed per day 3067
Replevying in city..... 3067
in town..... 3347
Street opening proceedings... 3180

Judicial Notice
Incorporation of town, n. 7, 3293; n. 2, 3301

Judicial Notice (*cont'd*) SEC.
Location of city or town..n. 2, 3197
Name of town.....n. 2, 3314
Ordinances not noticed...n. 8, 3066
Wards not noticed.....n. 1, 3037

Jurisdiction beyond corporate limits
Cemeteries .....cl. 45, 3106
Drainage .....cl. 26, 3106
Fair grounds.....cl. 45, 3106
Infirmary for the poor..... 3115
Levee.
Liquors, intoxicating, retailing, 3154
Manufactories, obnoxious, cl. 4, 3106
Markets.....cl. 11, 3106
Nuisances, abatement of..... 3154
Parks, public.....cl. 45, 3106
Powder magazines.....cl. 11, 3106
Prostitutes..... 3154
Sanitary matters..... 3154
Vagrants..... 3154
Water-works.....cl. 45, 3106

Jurors
Citizens may be in penal actions.....n. 19, 3066
not in damage actions..n. 29, 3161

Jury
City court, trials by..... 3062
Firemen exempt from service upon 3202, 3202*a*
Mayor's..... 3062
may instruct .....n. 20, 3066
Trial before mayor..... 3062

Justice of Peace
Apportionment for town.....3347*a*
City marshal attends..... 3075
Clerk of town, when may serve as.....n. 6, 3068; n. 1, 176
Docket of mayor, may hold, n. 1, 3063
Fees 3063*a*
Jurisdiction .....3062; n. 3, 3347
Prisoners, sends to work-house, 6229
Remission of penalty..... 6229
Serves as mayor..... 3063
Town officer may serve as..n. 1, 176

Ladders
Town may procure ..... cl. 3, 3333

Landings
City may build .....cl. 34, 3106
Regulating use of .....n. 4, 3155
Town may build .....cl. 18, 3333

Large cities
How governed..... 3051

Laws for city or town
Changed or repealed, may be, n. 2, 3106
General, must be 119, 212
Local, can not be..... 118
Salutary, what are..cl. 10, n. 1, 3106

Laws omitted SEC.
See Appendix for list of.

Lectures
License can not be exacted for, cl. 16, 3106

Legalizing acts
Elections in towns, effect..n. 1, 3209
Kokomo .....n. 5, 3036
Seymour .....n. 5, 3036
Sales .....n. 2, 3094
Town incorporations ..n. 9, 10, 3293

Levee
Assessment for 3151*a*
notice of 3151*a*
City may build 3151*a*
Clerk's duties.....3151*d*
Contract for.....3151*b*
Cost, how collected 3151*a*
Jurisdiction of city extended ..3151*c*
Notices 3151*a*
Order for estimate 3151*a*
Ordinances for 3151*a*
Payment 3151*b*
Plans.....3151*c*
Plats 3151*b*
Reference to committee.....3151*a*
Report of committee.....3151*a*
Sale of land on assessment....3151*d*
Survey 3151*b*

Levy for taxes
City's, when made 3157
Dog, amount.....cl. 15, 3333; 3156
See Dogs.
Interest, town bonds..... 3345
Library 3815, 3805
Limit in city 3156
in town ...cl. 15, 3333; 3345, 3342
Road tax in town 3356
School tax in town.....cl. 19, 3333
Sinking-fund tax in city..... 3158
in city or town of 16,000.... 3231
Water-works 3283
When and how made in town, 3348, 3349

Lewdness
Fines for, go to home for friendless women.....6243, 6245

Liability of municipality
Discretion and judgment, not liable for ..... n. 3, 3031

Library (city, town, or village)
Assessment..... 3800
Banking forbidden 3797
By-laws.....3799, 3786
Chairman of meeting..... 3792
Clerk of meeting..... 3792
Corporation becomes 3796
Directors..... 3793
annually elected..... 3798

Library (city, town, or village) *(cont'd)* SEC.
Dissolution 3804
city manages..... 3804
Elections.....3793, 3798
Establishment by city 3791
Incorporation .....3791 to 3797
Library in large cities.....3805*d*
Meetings 3792
Officers..... 3800
term 3801
Powers 3796
President..... 3793
Prizes, stock may be distributed as 3803
Quorum 3801
Record of organization ..3795; 3794
Rules and regulations in large cities.....3805*d*
Schools, see.
Seal 3800
Stock as prizes..... 3803
Stock, city may take.....3814; 3815
voting.....3810; 3811
Tax.....3805; 3805*c*
in large cities.....3805*d*
how levied and collected in large cities 3805*a*
limitation in large cities....3805*d*
Term..... 3801
Town may build 3791
Vacancies in office 3801
Voting stock..... 3801

Library (city or county)
Cities may take stock in..... 3815
Corporations may take stock in 3814
Election of officers 3807; 3811
Execution, stock not liable to . 3810
Fines, how collected 3813
Formation .....3806 to 3808
Powers of 3808, 3809
Schools, see.
Tax, exempt from 3808
stock exempt from 3810
Tax to pay for stock..... 3815

Library (county)
Appropriations for 3783
expenditure of 3784
By-laws posted 3786
Commissioners, duties of..... 3782
Fines, how collected 3786
Fund..... 3782
Inhabitants may use..... 3785
Librarian's duties 3787
Limit for keeping books..... 3785
Loans of fund,
3788; 3789; n. 1, 3784
Officers..... 3784
Rooms for..... 3784
Schools, see.
Treasurer's duties..... ... 3790

Library (county) *(cont'd)* SEC.
Trustee's duties 3784
who are 3784

Licenses
Amount, cl. 13, n. 5, 3106; 3346; 3226*c*
Auctions in city ..... cl. 38, 3106
in town .....cl. 7, 3333
Ball-alley .....cl. 14, 3106
Billiard-tables.....cl. 14, 3106
Bowling-alley.....cl. 14, n. 3, 3106
Cider.....cl. 13, n. 4, 3106
Clerk of city countersigns 3068
Contract, is not
cl. 13, n. 4, 3106; cl. 7, n. 3, 3333
Dog in city 3068
Entertainments, places of,
cl. 13, 3106
Exhibition.....cl. 15, 3106
Fees in town, to whom paid,
cl. 7, 3333
Ferry 3103
Fine arts exempt . .....cl. 16, 3106
Games and sports in city, cl. 14, 3106
in town .....cl. 7, 3333
General form 3068
Hacks and coaches, cl. 12, n. 2, 3106
Hospitals.....cl. 33, n. 3, 3106
Inns .....cl. 13, 3106
Keno table .....cl. 14, n. 3, 3106
Lectures.....cl. 16, 3106
Limit of amount,
3346; cl. 13, n. 5, 3106; 3226
Liquor, city may require, for sale of,
cl. 13, 3106; n. 1, 3066*a*; 3154
amount....cl. 13, n. 2, 3106; 3226*c*
notices 3100*c*
sale beyond limits..... 3154
Sunday .....cl. 13, n. 2, 3106
town may require.....cl. 7, 3333
Machines.....cl. 14, 3106
Market..... 3068
Mayor signs 3062; 3096
Money, refunding ..cl. 13, n. 3, 3106
paid to town marshal..... 3322
Negligence, city not liable for licensee's .....n. 28, 3161
Pawnbrokers 3232*b*
Power to exact under general welfare clause.....n. 5, 3155
President *pro tem.* of council signs 3096
Prohibiting sale of liquors,
cl. 7, n. 4, 5, 3333
Sports .....cl. 14, 3106
Taverns .....cl. 13, 3106
Theaters .....cl. 15, 3106
Town may exact.....cl. 7, n. 2, 3333
treasurer grants..... 3322
Transfer,
cl. 13, n. 7, 3106; cl. 14, n. 2, 3106
Vehicles .....cl. 12, 3106; 3156

Licenses (*cont'd*) SEC.
Wild animals in street, cl. 15, n. 3, 3106
When may not exact....cl. 16, 3106

Liens
Liens upon personalty, taxation 3086
Liens upon realty—
cisterns, construction of, cl. 43, 3106
drains, construction of, cl. 43, 3106
sewers, construction of, cl. 43, 3106
shade-trees, as to .....cl. 46, 3106
streets, improvement of, 3162, 3164
lighting of, cl. 28, 3106; 3162, 3164
repair of..... 3162
taxation 3086

Lieutenant-governor
Contest over office.....n. 1, 4743

Light
Resolution for lighting street, cl. 28, 3106
Streets in city.....cl. 28, 3106; 3162
in town.....3336; 3337

Liquors
Arrest for illegal sale 3226*c*
Destroying.....n. 6, 3155
License, requiring, in city, 3154; n. 6, 3155; cl. 13, 3106; n. 1, 3066*a*
beyond city limits 3154
in town.....cl. 7, 3333
Sale, regulating, on Sunday, n. 3, 3155
outside city limits .....n. 1. 3106
prohibiting.....n. 16, 3106
Saloons, closing .....n. 4, 3154

Literary property
Exempt from taxation.....6276

Loans
City may make temporarily .. 3159
City of 15,000 may make to pay debts.....3116, 3117
ordinance for 3117
City with more than 16,000 voters .....3120 to 3124
Illegality, agent of city can not question .....n. 1, 3159
Modifying city law, effect..... 235
Town may make..... 3342
limit 3342
petition..... 3342
See Bonds.

Local laws
Forbidden 118

Local self-government
Legislature can not deprive city of .....n. 2, 3043

Lotteries SEC.
Prohibited 230

Lucrative office
What is.....n. 1, 90

Machine shops
Aid to build.....n. 6, 3152

Majority
Of council, what is .....n. 5, 3097

Militia
Arms secured for..... 3227
Bond to secure arms..... 3227
Distribution of arms 3228
Firemen exempt from service upon 3202*a*

Mandamus
Assessment for street improvement .....n. 7, 3164
Civil engineer compelled to act .....n. 8, 3073
Election board, n. 1, 3046; n. 1, 3047
Officer, restoring to office, n. 2, 3, 3101
Precept.....n. 10, 3165
Seal of city secured by....n. 2, 3102
Validity of election return, n. 1, 3047

Manufactures
Obnoxious, jurisdiction of city over.....cl. 4, 3106
Regulating 3199

Marines
Right to vote 85

Markets
Appropriation of land for, n. 10, 3167
City may build .....cl. 33, 3106
where may not 3107
Council locates, cl. 11, 3106; cl. 33, 3106
Forestalling of prevented, cl. 29, 3106
Improvement at expense of abutters.....cl. 33, n. 4, 3106
License, form 3068
Maintain, where city may not, 3108
Master, appointment of..cl. 29, 3106
powers .....cl. 29, 3106
Meat inspection, act of 1889 void .....cl. 29, n. 4, 3106
Places established, cl. 33, 3106; cl. 11, 3106
Regulations, cl. 29, 3106; cl. 11, 3106; n. 6, 3155
Streets may be used for ....n. 14, 66

Market-house (city)
Building.....cl. 33, 3106
Consent of adjoining landowners 3107, 3108
Improvement at expense of abutters.....n. 4, 3161

Market-house (city) (*cont'd*) SEC.
Nuisance, when 3109
Removal 3109
Street used for, may not, cl. 18, n. 6, 3106; cl. 33, n. 1, 3106; 3107, 3108

Market-house (town)
Bonds for 3343
how sold 3344
tax for 3345
Building ..... cl. 8, 3333
Regulating ..... cl. 8, 3333

Marriages
Mayor may not solemnize 3062*n*
City judge may solemnize 3211

Marshal (city)
Arrests, makes 3075
Attorney fees, city liable for when ..... n. 2, 3078
Bond 3093
City court, attends 3075, 3218
Conservator of the peace 3075
Constable, has powers 3076
Contracts ..... n. 2, 3104
Deputy 3043
Duties and powers 3075
Election 3043
Fees 3077, 3077*a*, 3218
Felons, pursues 3075
Mayor's court, attends 3075
Mileage 3077*b*
Notice, serves 3168
concerning sea walls .. cl. 34, 3106
Oath 3095
Office abolished in large city .. 3221*b*
term 3043
Obstructions in street, removes, 3191
Powers 3075, 3076
Prisoner, how long may confine without trial 3075
works on street 3067
Process executes 3075; 3210
Return on warrant 3066
Street commissioner, duties performs 3043
Streets, duties as to 3043; 3191
Subpœnas serves for city commissioner 3168; 3169
Sale 3067
Term of office 3043
Vacancy 3050

Marshal (town)
Arrest, may make ..... n. 1, 2, 3327
Assistants to take census 3032
Bond 3320
Census of town, takes 3031
return of 3032
Constable, has powers 3327
Contracts for sidewalk 3359
Defending, town liable for cost of ..... n. 1. 3339

Marshal (town) (*cont'd*) SEC.
Deputy, can not have ... n. 2, 3327
Duties 3327
Election 3325
Fees ..... n. 1, 3330
License money, collects and pays to treasurer 3322; 3321
Pay 3330
Powers 3327
Prisoners, works 3347
Road supervisor, when is, 3367 and n. 6, 3367
Street commissioner, acts as, cl. 9, n. 1, 3333
Term of office 3325; 3326
Vacancy 3326
Working streets 3367

Mayor
Absence from city, leaves docket with justice 3063
Acknowledgments, may take .. 3062
Actions for penalties, how brought before 3066
Affidavits, may take 3062
Appeal lies from ..... n. 9, 13, 3066
practice ..... n. 10, 11, 3066
Appoints police officers ... cl. 8, 3106
Bail, can not receive money in lieu of ..... n. 10, 3062
Bank stock, list demands 3255
files with clerk 3257
Bond (official) 3062; 3095
liable upon for fees ..... n. 2, 3063
Bonds of city, signs 3118
Calls council meetings .. n. 1, 2, 3097
Commission ..... n. 4, 3043
Commissions of officers, signs, 3062 and n. 5, 3062
Common council, president of, 3096
Complaint before, 3066 and n. 6, 3066
form 3066
Conservator of the peace, 3062 and n. 2, 3062
Contempt, may punish ... n. 11, 3062
Contracts of city, signs 3096
Court holds, except on Sunday, 3062
Deed for public square, signs, cl. 47, 3106
for real estate sold, signs 3112
ackowledgments of, may take, 3062
Depositions, may take 3062
Docket 3063
death of mayor 3063
deposited with justice ... n. 1, 3063
entries 3066
examined by attorney-general, n. 9, 3062
fees 3063
how keeps 3063; 3066
Duties 3062
Election 3043

Mayor (*cont'd*) SEC.
can not order for incorporation....n. 8, 3031
Fees.....3063; 3063*a*; n. 2, 3063
pays to city treasurer..... 3063
release, must execute 3063
form..... 3063
Females, sends to home for friendless women..... 6240
Fines, pays over to treasurer.. 3062
Home for friendless, keeps accounts with..... 6246
Imprisonment, may inflict.... 3062
Judicial officers,
n. 3, 156; n. 1, 176; n. 4, 3043
Jurisdiction .....3062 and n. 6, 3062
Jury may instruct .....n. 20, 3066
trial by, must allow 3062
Justice of peace, acts as..... 3062
Licenses, signs 3096; 3062
Marshal attends his court..... 3075
Member of city council,
3096 and n. 4, 3096
of board of health..... 4993
Minutes of city council, signs,
n. 1, 3097
Notice to, of defective street,
n. 5, 3043
Oath 3095
Officers of city, supervises..... 3062
Office is judicial,
n. 4, 3043; n. 3, 156, n. 1, 176
term 3043
Orders, signs .....3069; n. 5, 3162
Ordinances enforced before ... 3066
Penalties, may remit 6229
suits for 3066
Permits, signs 3062; 3096
Plat of city, signs.....3249; 3250
Pleading before 3062
Police officer, appoints ....cl. 8, 3106
Powers of..... 3062
Practice before ..3062 and n. 8, 3062
Recommends measures to council..... 3062
Remission of penalty..... 6229
Removing city officer, may not,
n. 3, 3062
Report of fines..... 3062
concerning home for friendless women 6246
Salary, when can not draw.... 3063
Seal of city, keeps..... 3062
when does not use,
n. 1, 3102; n. 4, 3062
Sickness, docket deposited with justice..... 3063
Signs ordinances in large city, 3055
in any city..... 3099
statement of indebtedness ... 3120
Term of office..... 3043
in case of appointment 3050*b*
Tie, casts vote when there is .. 3096

Mayor (*cont'd*) SEC.
Vacancy in office how filled,
3050; 3050*a*
docket deposited with justice, 3063
Venue, when can not be taken from 3062
wrongfully denying, effect,
n. 12, 3062
Votes when there is a tie 3096
Warrants, signs 3069
how directs for an arrest, n. 1, 3066
Work-house, visits 6235

Meat
Inspection law of 1889 void,
cl. 29, n. 4, 3106
Sale of, regulated.....n. 3, 3155

Mechanic's lien
Can not be taken on city or town property,
cl. 33, n. 5, 3106; n. 25, 4444

Mendicants
City may punish .....cl. 20, 3106

Metropolitan police
See Police.

Milk
Sale of regulated....cl. 35, n. 2, 3106

Mills
Exercise of power of eminent domain .....n. 1, 66

Minor
Agreement upon measure of damages .....n. 23, 66
Taking part in gaming,
cl. 14, n. 2, 3106

Mittimus
Forms.....3066; 3067

Mobs
City not liable for acts of,
cl. 7, n. 1, 3106; n. 3, 3203

Money
Appropriation by town 3339
drawing 3341
Borrowing, city may.....n. 22, 3106

Monopoly
Gas.....cl. 28, n. 5, 3106
Street railways .....n. 3, 4147
Water-works.....cl. 26, n. 8, 3106

Monument
May use in street .....n. 12, 66

Municipality
Inhabitants are not .....n. 4, 3036
Jurisdiction .....n. 1, 3106

Museum
Library company may build .. 3812

Music
Regulation in street .....cl. 1, 3106

Name SEC.
City's .....n. 1, 3031; n. 3, 3036
Consolidation of city and town, 3239; 3240
Town's 3297
change of..... 3384

National road
A public street in Indianapolis, cl. 18, n. 7, 3106

Natural gas
Regulations for 3229*h*
Use of street for .....n. 2, 3229*h*
See Gas.

Nays and ayes
Called on adoption of ordinance 3099

Negligence
Abutter when liable to city, n. 40, 3161
when not liable.....n. 19, 3161
Animal injured in city pound, cl. 21, n. 1, 3106
Bill of particulars can not be demanded .....n. 23, 3161
Blind person using street, n. 18, 3161
Bridges, defects in ....n. 25, 24, 3161
Building material in street, n. 26, 3161
Coasting in street .....n. 27, 3161
Completion of work.....n. 11, 3106
Constitutional limitation on indebtedness, no defense, n. 22, 37, 3161
Contractor liable for his own negligence .....n. 20, 3161
city not liable for his acts, n. 27. 3161
when city liable for his act, cl. 26, n. 4, 3106; cl. 18, n. 8, 3106; n. 20 3161
Contributory, no recovery, n. 22, 3161
Culvert insufficient for water, n. 32, 3161
Dead animal in street, cl. 18, n. 9, 3106
Driver's concurring with city's, no defense.....n. 22, 3161
Exhibiting animals in street, cl. 15, n. 3, 3106
Excavations in street, cl. 18, n. 9, 3106; n. 24, 3161
Firemen, city liable to for defective street, n. 18, 3161; n. 2, 3202
Freshets, cl. 26, n. 9, 3106; n. 32, 3161
Frightening animals, n. 18, 28, 3161; cl. 18, n. 9, 3106
Gas works .....cl. 28, n. 8, 3106
Ice on sidewalk .....n. 40, 3161
Insurer of safety of, city is not, n. 23, 3161

Negligence (*cont'd*) SEC.
Juror, tax-payer can not serve as in damage case....n. 28, 3161
Licensee, city is not liable for his acts .....n. 28, 3161
Looking for defect, traveler must .....n. 22, 3161
Ministerial act, city liable for failure to exercise ....n. 5, 3106
Narrow bridge .....n. 24, 3161
Notice of defect, n. 2, 3074; n. 40, 3161
to councilmen is to city, n. 2, 3096
Obstruction causing injury, n. 19, 3161
Omission of third person, n. 19, 3161
Plan defective, cl. 43, n. 17, 3106; n. 12, 34, 3161
Police officer, city not liable for his act .....cl. 8, n. 1, 3106
Prisoner escaping and officer falling in ditch .....n. 30, 3161
Railroad in street, and lowering grade, n. 27, 3161, n. 1, 4153
Repairing street .....n. 18, 3161
Sewer, damages occasioning, cl. 43, n. 12, 3106
imperfect construction, cl. 43, n. 10, 3106
repairing .....cl. 43, n. 7, 3106
Sidewalk, ice and snow on, n. 23, 40, 3161
Stairway opening on street, n. 38, 3161
Street railway in street,...n. 1, 4153
Surface water, n. 32 to 34, 3106; cl. 43, n. 17, 3106
Survival of action.....n. 35, 3161
Tax-payer incompetent to serve as juror.....n. 29, 3161
Third persons act, liability of city for .....n. 19, 3161
Town liable.....n. 1, 4, 3367
Traction engine on bridge, n. 25, 3161
Transfer of land injured, n. 36, 3161
Viaducts, railroad must build, n. 28, 3161
Wall standing when dangerous.....n. 31, 3161
Water-works, negligence in constructing .....n. 1, 3277
improper construction, cl. 26, n. 4, 3106
Wrong-doer liable to city, n. 19, 3161

New trial
Mayor may grant .....n. 14, 3066

Noise
Increasing damages to property, n. 23, 66

Notice SEC.
Advertisement for bids, 3162; cl. 43, 3106; 3151*b*
Agreement to unite city and town 3235
Annexation in city..... 3196
Appraisement of land for harbor..... 3137
Attorney of city on appeal from street opening 3180
Board of equalization in city.. 3157
City clerk notifies officers elect, 3048
city commissioners of meeting..... 3168
Condemnation proceedings for water-works 3266
Contractors, cl, 43, 3106; 3162; 3151*b*
Corporation affected by street-opening 3179
Damages for unknown land-owners 3183
Defective street, n. 5, 3043; n. 21, 3161
Disannexation notice..... 3247
Election, first city election.... 3037
incorporating city..... 3033
special.....3047; 3043
to person elected.....n. 1, 3048
town 3304; 3305
water-works 3265
See Elections.
Interest on city orders stopped, 3082
Meeting of city council..3168; 3097
city commissioners..... 3168
town trustees 3332
Nuisance, abatement....cl. 35, 3106
Officer, removal..... 3101
Ordinances not taken judicially of by courts.....n. 8, 15, 3066
Payment of interest stopped .. 3082
Publication.....3232*a*
designating paper 3100*b*
in large cities.....3100*d*; 3100*a*
posting in lieu of..... 3232
Removal of bodies from vacated cemetery 3291
Repairing docks 3144
Sale of lands..... 3119
for taxes..... 3091
personal property for taxes, 3089; 3090
See walls, concerning ...cl. 34, 3106
Sewer.....cl. 43, 3106
Street opening 3177; 3168
vacation..... 3184
Town, legal, how given..... 3232
Treasurer's, (city) concerning taxes 3087
(town) settlement 3323
Vacation of street..... 3184
Written, sufficient..... 3232

Noxious trades
Regulations for.....cl. 4, 3106

Nuisance SEC.
Abatement by city, 3154; cl. 2, 3106
Cemeteries are not *per se*, cl. 5, n. 3, 3106
Market-house may be 3109
Notice to abate .....cl. 35, 3106
Obstructions in street, cl. 18, notes, 3106
Sand in street.....cl. 18, n. 1, 3106
Suppression, city may....cl. 2, 3106
town may .....cl. 4, 3333
What is .....cl. 4, n. 1, 3106

Nunc pro tunc
Embezzlement may be shown by.....n. 1, 3078
When may be made .....n. 1, 3068

Oaths
Clerk of city can not administer, n. 1, 3068
Failure to take official oath, complaint 3049
Filing 3049
Form 3049
Officers must take.....3049, 3095

Obstructions
Alleys, in, town may prohibit, cl. 6, 3333
Buildings .....cl. 18, n. 6, 3106
Damages caused by, cl. 18, n. 10, 3106
Doors .....cl. 18, n. 5, 3106
Door-steps .....cl. 18, n. 5, 3106
Hole in sidewalk ...cl. 18, n. 5, 3106
Market-house, cl. 33, n. 1, 3106; cl. 18, n. 6, 3106
Peanut stand.....cl. 18, n. 6, 3106
Proof of.....cl. 18, n. 6, 3106
Riding upon sidewalk, town may prohibit.....cl. 11, 3333
Scaffolding .....cl. 18, n. 6, 3106
Shutters .....cl. 18, n. 5, 3106
Sidewalks, on, town may prohibit,.....cl. 11, 6, 3333
Skids .....cl. 18, n. 6, 3106
Stairways .....cl. 18, n. 6, 3106
Streets, to, town may prohibit, cl. 6, 3333
What is .....cl. 18, notes, 3106

Office
Abandonment of .....n. 2, 156
Abolished, when may be ..n. 3, 3043
Bribery disqualifies 87
Demand for possession 3095
Duelist, can not hold 88
Duration 224
Judicial, all are conservators of the peace 175
mayor is ..... n. 4, 3043
Legislature may create but can not fill .....n. 3, 3043
Lucrative, what is 90

Office (*cont'd*) SEC.
Oath 3049
Penalty for not serving 3049
Vacancies, how filled 159
when can not be filled, n. 3, 5, 3050
when occurs.....n. 4, 3050

Officer
Acceptance, failure to make, penalty .....n. 1, 3049
complaint upon 3049
Appointment, how made..... 223
form 3050*b*
when made .....n. 3, 3098
Assessor's in city, abolished, n. 1, 3, 3071
Bond, failure to give and effect, 3050*d*, and n. 1, 3050*d*
Board of election is ..... n. 1, 3046
Bribe, accepting disqualifies .. 87
Clerk of city may serve as justice of peace.....n. 6, 3068
Commissions of city officers, n. 2, 3047
signed by mayor..... n. 5, 3062
Contract of city, can have no interest in 3104, 3226*a*
void .....n. 4, 3364
Defaulter can not hold office .. 91
Deputies.....n. 7, 3043
who can not be....3043*a* to 3043*d*
Duelist can not hold office 88
Duties and powers of appointee 3050*e*
Election in city, when 3043
Expulsion ..3101, and n. 1 to 7, 3101
Failure to qualify .....n. 1, 3049
Fees and salary regulated by general law 118
Holding over.....225; n. 10, 3043
Impeachment 158
Interest in contract 3104, 3226*a*
Intoxication 3226*b*
Judicial office, when disqualifies 176
Mandamus to compel election board to act, n. 1, 3046; n. 1, 3047
Oath 226, 3050*e*
Penalty for failure to qualify, complaint 3049
Pro tempore appointment 92
Qualifications..... 3222
Removal, effect of.....n. 158; 3101
mayor can not make ....n. 3, 3062
notice 3101
ordinance..... 3101
Residence 156
Resignation.....n. 4, 3050
Tenure limited..... 224
Terms.....3043, 3050*c*
Vacancy, clerk.....3050*a*
councilmen 3050*a*
mayor 3050*a*

Officer (*cont'd*) SEC.
term 3050*a*
Who are city officers, 3043; n. 2, 3098

Oils
Sale of controlled .....n. 1, 3155

Old city
How may adopt general city laws..... 3039
Interest on debt..... 3040
Liabilities 3040
Officers..... 3041
Property 3040
Rights 3040

Omitted laws
See Appendix for list.

Omnibuses
Rates of fare.....cl. 36, 3106
Stands.....cl. 36, 3106
Taxing 3156

Orders (city)
Assessments receivable for.... 3080
Cancelled, can not be used.... 3080
Clerk draws 3069
Countersigned by clerk..... 3069
Discounting unlawful 3104
Interest on ...3081; n. 1, 3082; 3040
notice to holders, to stop interest..... 3082
Levee paid for with 3151*b*
Mayor signs 3069
Order of payment..... 3081
Payable on presentation 3040
Presiding officer can not sign, 3079
Register.....3069, 3080
Sewer paid for with, cl. 43, n. 4. 3106
Signed by mayor..... 3069
Taxes paid with.....3080, 3082
Treasurer accepts 3079, 3080
cancels 3080
redeems 3080
registers 3080
When can not be drawn 3069
in large city 3123

Ordinances (city)
Adoption .....n. 3, 3099
in large cities..... 3055
Affidavit denying publication.. 3064
Appropriation, form..... 3105
Attorney of city draws..... 3078
Ayes and noes called on passage..... 3058
Bond ordinance.....3095, 3119
By-law .....n. 2, 3099
Clerk attests 3099
records..... 3099
Constitution concerning title of does not apply to .....n. 2, 3100
Construction..n. 18, 3066; n. 8, 3100
Copy of need not be set out in complaint 3066

Ordinances (city) (*cont'd*) SEC.
Council may regulate duties of officers by 3098
powers as to.....3106, 3155, 3162
Defined .....n. 2, 3099
Drainage, form .....cl. 2. 3106
Emergency clause, form 3100
Enacting clause, form, 3100, and n. 5, 3100
Enforcement, how penal are, n. 2, 3066
failure to, effect on city, n. 14, 3106
injoining, can not be....n. 7, 3347
Essential parts, n. 9, 3155; n. 2, 3333
Evidence when duly printed .. 3100
General welfare clause authorizing adoption 3155
Grade ordinance 3073
Impeachment of officers 3101
Incorporation, town or city, effect upon .....n. 3. 3036
Judicial notice not taken of, n. 8, 3066
Jurisdiction of city.....n. 1, 3206
Levee ordinance 3151*a*
Marshal of town enforces 3327
Mayor executes 3062
signs 3099
tries violations of, 3062, and n. 6, 3062
Notice of contents, every one must take .....n. 15, 3066
Nunc pro tunc .....notes, 3068
Old town adopting general law, form .....n. 1, 3041
Passage of..... 3099
Penalties on sliding scale, n. 7, 3100
Pleading and practice under, n. 4, 6, 7, 3066
Printed copies may be used, n. 1, 3099
Proof of, n. 2, 3, 3064; n. 8, 3066; n. 1, 3099
Publication .....n. 1, 3100
affidavit denying..... 3064
clause, form..... 3100
must be in English language, n. 1, 3100, 3150*g*
order for not necessary 3064
penal..... 3100
supplemental, must be ..n. 1, 3100
town .....cl. 16, 3333
Reasonable, must be .....n. 6, 3100
Recording .....n. 1, 2, 3099
Repairs to street 3162
Repeal of .....n. 4, 3100
Restraint of trade .....n. 6, 3100
Rules of evidence, can not change.....n. 8, 3066
Salary, form 3105
Sewer, form .....cl. 43, 3106

Ordinances (city) (*cont'd*) SEC.
Shade-trees, form 3229
Signing by mayor ..3055; n. 1, 3099
by president of board of aldermen..... 3055
Tax levy..... 3157
Title to .....n. 2, 3100
Trial of officers, form..... 3101
Validity for the courts ....n. 6, 3100
Working out penalty of on streets 3067

Ordinances (town)
Defenses to .....n. 8, 3347
enforcement.....n. 5, 3347
Fines, collection 3346
Injoining enforcement, can not, n. 7, 3347
Pleading to enforce 3331
Publication ....cl. 16, n. 2, 3333
Repairs to street 3162
Title.....n. 6, 3347
Welfare clause.....cl. 16, 3333

Orphans' Home
Councilmen may visit ....n. 7, 3096

Parks
Avenue taken for ...cl. 45, n. 3, 3106
Definition.....cl. 45, n. 4, 3106
Donation of land, acceptance .3292*u*
Improvement of.....cl, 46, 3106
Library may maintain..... 3809
Lighting of.....cl. 28, 3106
Property may be taken for..n. 15, 66
Protection to .....cl. 45, 3106
Railroad in, n. 15, 66; cl. 45, n. 3, 3106
Real estate, city may purchase for.....cl. 45, 3106
Rules and regulations for, 3292*p*; cl. 45, 3106
Square defined.....cl. 45, n. 4, 3106
Street improvements, liability for 3163
railway laid in, n. 1, 4147; cl. 45, n. 3, 3106
Tax for park.....3292*q*; 3292*v*

Parks, proceedings to condemn land for
Appeal when must be taken from proceedings 3292*o*
trial upon.....3292*o*
Commissioners, appointment..3292*l*
certificate of.....3292*l*
notice of.....3292*l*
Condemning land for park 3292*l*
Damages, commissioners assess, 3292*l*
tender.....3292*n*
Duties of commissioners 3292*m*
Jurisdiction of city extended...3292*l*
Notice of assessment of damages 3292*l*
of commissioners appointment 3292*l*

Parks, proceedings to condemn land for (*cont'd*) SEC.
to land-owner 3292*l*
Oath of witnesses 3292*m*
Report of commissioners 3292*m*
forms 3292*m*; 3292*o*
refusal to accept 3292*o*
Resolution of condemnation ... 3292*l*
Rules and regulations for 3292*p*
Tax for park 3292*q*
Town may purchase 3292*l*

Park commissioners
Accounts and receipts, keep .. 3292*x*
Control parks 3292*w*
Donations, may accept 3292*u*
Duties 3292*m*
Election 3292*s*
bond and oath 3292*t*
notice of 3292*t*
Pay 3292*w*
Powers 3292*y*
Report 3292*x*
Tax for park 3292*v*

Partition fences
City may regulate .. cl. 41, n. 1, 3106

Party walls
City may regulate,
3156; cl. 41, 3106

Pauper
Exemption from city poll-tax, 3156

Pawnbroker
License for,
n. 8, 3155; cl. 16, 3106; 3232*b*

Peace
City preserves ..... cl. 7, 3106
Mayor conservator of 3062
Town preserves ..... cl. 6, 3333

Peanut stand
Obstruction to street, cl. 18, n. 6, 3106

Peddling
City may regulate ..... cl. 23, 3106
Definition of ..... cl. 23, n. 2, 3106
Town may require license, cl. 7, 3333

Penalty
Actions for in city 3066
civil action is ..... n. 4, 3066
Complaint in town ..... n. 5, 3347
Election inspector incurs, when, 3034
clerk, when 3034
judge, when 3034
Home for friendless women get,
when ..... n. 3, 183; 6243
Limit 3155
Mayor pays over 3062
Recovery, how had in city 3066
in town 3347
Refusing to accept office, incurs 3049
Remission 6229

Penalty (*cont'd*) SEC.
School gets ..... n. 3, 183
Town may recover 3347
how recovered 3347
nature of action to ..... n. 4, 3347

Permits
Mayor signs 3062; 3096
clerk countersigns 3068

Personal property
Assessment by city assessor 3071
See Taxation.

Pest house
City may build,
cl. 33, 3106; cl. 24, n. 1, 3106
Renting ..... cl. 35, n. 2, 3106

Pestilential diseases
City may prohibit ..... cl. 24, 3106

Petition
Annexing out-lots to town 3388
Cemetery, vacating 3290
Dissolution of city 3130
Incorporating city 3031
town 3296
Loan in town 3342
Public square, selling .... cl. 48, 3106
use for public school 3386
Railroad, aid to 3152; 3153
Removal of building .... cl. 32, 3106
Shade-trees 3229
Street, changing 3190
vacation in city 3184
vacation in town 3379
Surrender of city charter 3128
town charter 3318
Water-works 3265

Piers
City may build ..... cl. 34, 3106

Place of amusement
City may regulate ..... cl. 14, 3106

Plans
Changing for street improvement ..... n. 7, 3073
Civil engineer prepares 3073
Defective sewer plan,
cl. 43, n. 5, 17, 3106
Negligence in selecting .. n. 12, 3106

Plats of city
Acknowledgment ... 3376; n. 4, 3375
Approval 3253*a*
City may make 3249; 3250
Conveying land by reference to,
effect ..... n. 5, 3375
Dedication by ..... n. 1, 2, 3374
Defined ..... n. 5, 3195
Evidence as 3249; 3250
Legalized 3253
Petition submitting to city
council 3253*a*

Plats of city (*cont'd*) SEC.
Preservation of..... 3251
Record of.....3250; 3251
Survey for.....3249
Vacation, laws concerning must be general 118
how made..... 3379
Wife signing .....n. 3, 3375

Plat of town
Acknowledgment of..... 3376
Adopting new plat 3391
Donation by 3375
Evidence, when is..... 3249
Imperfect plat corrected 3378
Legalized..... 3253
Lost may be replaced..... 3391
Recording 3377; 3374
penalty for failure to..... 3377

Pleading and practice
Abatement .....n. 5, 3066
Absence of defendant ....n. 21, 3066
Action on ordinance a civil case.....n. 4, 3066
Amendment of complaint, n. 11, 3066
Appeal to circuit court ....n. 9, 3066
bond 3067
to supreme court.....n. 13, 3066
Collateral attack on incorporation of city can not be made .....n. 17, 3066
Commitments..... 3066
Costs .....n. 12, 3066
Crimes not punishable by city, 3066*a*
Defenses .....n. 5, 3066
Defendant declining to testify, n. 8, 3066
Docket entry of trial..... 3066
Estoppel .....n. 16, 3066
Evidence, rules of can not be changed by ordinance, n. 8, 3066
Executions and levy 3067
Judgment of conviction, n. 1 to 3, 3067
Judicial notice.....n. 8, 3066
Jury, citizen of city may be, n. 19, 3066
instructing .....n. 20, 3066
Mittimus to work-house 3067
New trial .....n. 14, 3066
Proof of ordinance.....n. 8, 3066
Proviso in ordinance .....n. 6, 3066
Recognizance..... 3066
Statute of limitations .....n. 5, 3066
Subpœna 3066
Transcript, certificate..... 3067
Venire 3066
Warrant..... 3066

Police
Act of 1889 unconstitutional, cl. 8, n. 2, 3106; n. 2, 3043
Appointments.....cl. 8, 3106
Board of police established, cl. 8, 3106

Police (*cont'd*) SEC.
Chief of fire department has powers of..... 3201
Establishment of .....cl. 8, 3106
Humane inspector has powers of 3221*p*
Liability of city for acts of cl. 8, n. 1, 3106
Mayor appoints .....cl. 8, 3106
Notice of defect in street ..n. 5, 3043
Regulations of .....cl. 8, 3106
Removal from .....cl. 8, 3106
See Arrest.

Police (metropolitan)
Additional patrolmen, appointment of.....3221*k*
term.....3221*k*
Acts of 1889 unconstitutional, cl. 8, n. 2, 3106; n. 2, 3043
Arrest, power to make 3221*f*
Board of commissioners, appointment of.....3221*a*
old board abolished.....3221*e*
powers of 3221*b*
qualifications of 3221*c*
Bond of commissioners 3221*a*
of superintendent.....3221*m*
Duties of police.....3221*k*
Electioneering prohibited 3221*l*
Expenses charged to city 3221*g*
Fees, members of force can not take 3221*i*
disposition of.....3221*i*
taxing 3221*i*
Interfering with, penalty.....3221*j*
Marshal's office abolished.....3221*k*
duties performed by police . 3221*k*
Old board abolished 3221*e*
Patrolmen, number of 3221*b*
pay of.....3221*b*
qualifications of 3221*b*
Powers of board.....3221*b*; 3221*e*
President, appointment 3221*c*
member of board of health ..3221*c*
Process, police serves.....3221*k*
Property, control of 3221*e*
Removal from office, rules concerning.....3221*d*
Repeal of laws 3221*o*
Rewards, can not accept 3221*i*
Rules and regulations..3221*b*; 3221*d*
Secretary and bond.....3221*c*
Special police.....3221*k*
Superintendent 3221*b*
pay.....3221*b*
qualifications 3221*b*
Suspension of police officer ...3221*b*

Poll tax
City may levy 3156
Town may levy 3345

Poor
City may build infirmary for.. 3115

Population SEC.
Number to incorporate city, 3031; 3033
Return of town marshal concerning 3032

Posse comitatus
Peace, officer may commend, n. 8, 3076; 3076*a*

Pound
City may establish, cl. 21, 3106; cl. 27, 3106
Land may be condemned for, n. 13, 66
Sale of animals .....cl. 21, n. 2, 3106

Powder
Magazine located by city, cl. 11, 3106
See Gunpowder.

Powers of city or town
Extraordinary .....cl. 13, 3106
Failure to exercise, cl. 3, n. 1, 3106; n. 4, 5, 3106
Incidental .....n. 13, 3106
Limit ... .n. 4, 3106
Ministerial, failure to exercise, n. 5, 3106
Surrender .....n. 4, 3106

Precept
President *pro tem.* can not sign, n. 5, 3096
See Street Improvement.

Precincts
Size in city or town 3224
See Elections.

President pro tem.
Board of aldermen elects 3057
Council elects 3096
Powers .....n. 5, 3096

President of board of aldermen
Election..... 3057
Vacancy in office, mayor acts, 3060

Privies
Nuisances .....cl. 4, n. 1, 3106

Prisons
City may build ...3225; cl. 44, 3106
Commitment to by city, 3062, 3067, 3075, 3201
Jail, city may use, 3062, 3067, 3075, 3201
town may use..... 3225
Keeper, duties of..... 3067
Labor in 3067
allowance for 3067
hours of..... 3067
Law applicable to city prison, 3225; cl. 44, 3106
Town may build 3225

Prisons (*cont'd*) SEC.
Work-house, used by city, 6232; 6237
by town 6237
See Home for Friendless Women.

Prisoner
Confinement in work-house, 3067, 6232; 6237
by town 3347
Credit for work in town 3347
Judgment of conviction essential..... .n. 1, 2, 3067
Length of imprisonment, 3067, 3075, 6239
Throwing officer in ditch, city not liable to such officer, n. 30, 3161
Working out fine, 3067 and n. 1 to 3, 3067; 3225

Process
City marshal serves 3075
Service on city.....n. 3, 3036
school, city trustees.....n. 3, 3036
corporation..... 3065
Sheriff serves for city court... 3210
railroad 3065
Warrant necessary in city actions .....n. 21, 3066

Property
Purchase by city, n. 13, 3106; n. 5, 3155

Prostitutes
Arrest..... 3154
Associates..... 3154
City may restrain.....cl. 20, 3106
Loitering on streets, cl. 20, n. 2, 3106
Town may punish.....cl. 6, 3333

Publications
Annexation proceedings in town must be published .. 3389
Averment concerning, unnecessary 3064
How made 3100*g*
Number..... ....3100*f*
Ordinances, only penal must be.....n. 1, 3100
Proof of how made concerning ordinance.....n. 2, 3, 3064
Sewer account 3398
Town ordinances ..... cl. 16, 3333
vacation of town 3379
vacation of street..... 3368

Public property
City council regulates, cl. 29, 3106; cl. 45, 3106
Town trustees may control ... 3338
may inclose .....cl. 14, 3333

Public square
City may sell.....cl. 47, 3106
may purchase .....cl. 47, 3106
School purposes, use of for ... 3386

Public square (*cont'd*) SEC.
Town may inclose .....cl. 14, 3333
Use for public school of town, 3386
Vacation, laws concerning must be general..... 118
city may vacate 3184
title to, after vacation..... 3381
town may vacate 3385

Pumps
Obstruction to street, cl. 18, n. 6, 3106
Town may regulate .....cl. 3, 3333

Quarantine
City may establish.....cl. 6, 3106

Quietus
City clerk issues 3080
form 3080

Quo warranto
Annexation proceedings can not be thus tested ....n. 4, 3195

Quorum
Appeal from precept, quorum must be shown .....n. 14, 3162
Breaking an offense, n. 7, 3097; 3097*a*
Less than can not transact business .....n. 8, 3097
What is.....n. 5. 3097

Railroads
Actions against 3065
Appropriation of right of way for street.....n. 11, 3167; 3156
constitution authorizes....n. 1, 66
Crossings, must build bridges over.....n. 28, 3161
must clean.....cl. 42, 3106
signals at 4020
Damages for appropriation of a way across .....n. 11, 3170
Donations to, legalized.....3224*a*
made to 3152
Flagmen and gatemen, cl. 42, n. 2, 3106
Grade, city may regulate 3224*e*
city may fix.....3161*b*
lowered to street level, n. 27, 3161
negligence in city for not regulating .....n. 27, 3161
Gutters and crossings, must clean.....cl. 42, 3106
Harbor constructed over..... 3134
Judgment against, for penalty, 3065
Liability for street improvement.....n. 16, 18, 3162
Life, protection to .....cl. 42, 3106
Marine.....3110*a*
Occupying street, cl. 18, n. 9, 3106; n. 1, 3328
Parks, may not use, n. 15, 66; cl. 45, n. 3, 3106
Public aid by city..... 3152; 3153

Railroads (*cont'd*) SEC.
bonds, *bona fide* purchaser protected .....n. 14, 3152
city may take 4090
defense to .....n. 16, 3152
interest 4091
payment 4092
borrowing money to aid, n. 17, 3152
compulsory on city to act, n. 2, 3152
councilmen interested in railroad.....n. 9, 3152
donation, meaning .....n. 3, 3152
by city.....n. 17, 3252
election expenses..... 4093
injoining subscription, n. 13, 3152
levy of tax to pay.....n. 11, 3152
machine shops, can not aid, n. 6, 3152
petition for election 4088
council must act upon n. 2, 3152; 4089
form 3153
signatures, withdrawal of n. 5, 3152
sufficiency ..... n. 7, 10, 3152
sinking fund to pay bonds .. 3152
stock of railroad city may take .....n. 1, 198
subscription, terms of..n. 20, 3152
tax to aid 3152; 4091
levy .....n. 11, 3152
township property liable to tax .....n. 22, 3152
ultra vires as a defense, n. 15, 3152
withdrawal of signature from petition.....n. 5, 3152
Process, how served on..... 3065
Signals at crossings 4020
injury at.....n. 2, 4020
constitutionality of statute requiring .....n. 1, 4020
penalty for not giving 4021
action to recover 4022
attorney's fee 4022
damages 4023
school fund receives..... 4024
Speed, regulated in cities, cl. 39, 42, n. 1, 3106
Street, use of by railroad, n. 13, 66; cl. 18, n. 9, 3106; n. 11, 3167; n. 7, 3161; n. 1, 3328
Taxing, city may ... .n. 11, 3156
town may 3156
Viaducts over street, cl. 40, n. 3, 3106; n. 28, 3161
See Street Railways.

Real estate
Assessment by city assessor for taxes 3072
City may purchase.....cl. 45, 3106

Real estate (*cont'd*) SEC.
Conveyance, city may ...cl. 45, 3106
Execution, can not be sold upon.....n. 1, 3111
Purchase, city may.....cl. 45, 3106
for sanitary purposes 3115*a*
Sale authorized..3111 and n. 1, 3111
appointment of appraisers .. 3113
request for 3113
appraisement 3113
deed.....3113; n. 1, 3111
mayor signs..... 3112
oath of appraisers 3113
order for sale 3113
vote..... 3112

Receipts
Clerk's 3080
for cancelled bonds..... 3083
Registry of.....3069, 3080
Treasurer's, registry of 3080

Recognizance
Form 3066
When proceeds go to home for friendless women 6245

Records
Clerk keeps..... 3068
Contractor must satisfy 3229*i*
Evidence of proceedings of council .....n. 2 to 4, 3068
Nunc pro tunc entry.....n. 1, 3068
Parol evidence to show acts of council .....n. 1, 3068

Recorder (county)
Trustee of county library 3784

Redemption
From city tax sale 3092
town tax sale 3352
See Street Improvement.

Regrating
City may prohibit.....cl. 29, 3106

Register of orders
Clerk keeps..... 3069

Register of receipts
Clerk keeps..... 3069
Treasurer's 3080

Removal
Officer may be removed...n. 1, 158

Replevin
Lies for seal of city .....n. 2, 3102

Replevying judgment
Prisoner may at any time..... 3067

Reports
Clerk's monthly..... 3062
Committee on drainage ..cl. 2, 3106
Marshal's, of census 3032
Mayor's, of fines collected 3062
Sinking fund commissioners'..3162*d*

Reports (*cont'd*) SEC.
Street commissioner's 3074
Treasurer of city, delinquent taxes 3087
monthly 3083
sale of bonds..... 3119
sale of land for taxes..... 3092
sinking fund 3126*c*

Rewards
Police can not accept 3221*j*

Reservoirs
Town may build .....cl. 3, 3333

Residence
Electors must have..... 84
Not lost by temporary absence, 86
Voters must reside in ward ... 3222
Where officer must reside 156
See Elections.

Resolution
Ayes and noes in large cities called upon passage 3058
passage of 3099

Riding
City may prohibit immoderate, cl. 17, 3106
Town may prohibit immoderate .....cl. 6, 3333, 3338
may prohibit riding on sidewalk .....cl. 11, 3333

Road supervisor
Street commissioner has power of..... 3161
Town marshal acts as such ... 3367

Road working
In city 3156*a*
In town 3355, 3356

Roof
Overhanging street, cl. 18, n. 6, 3106

Rubbish
Removal of.....cl. 10, n. 1, 3106

Runners
City may regulate at depots and wharves .....cl. 37, 3106

Salary
Aldermen 3059
City officers..... 3105
Common council fix..... 3105
Councilmen 3059, 3105
General laws for 118
Increase during year illegal .. 3105
Mayor, restrictions as to drawing..... 3063
Must be certain in amount, n. 1, 3105
Ordinance, fixing, form 3105
Payment of..... 3105
Power of city over.....n. 1, 3105

Sale SEC.
Marshal's 3067
Real estate by city 3111
See Taxation.

Saline fund
School fund gets 183, 4325

Saloons
Beyond city limits.....n. 2, 3154
Closing by ordinance .... n. 4, 3154
Locked on Sunday..cl. 13, n. 8, 3106
See License.

Salvation army
Suppressing .....cl. 1, n. 1, 3106

Sand
Obstruction to street,
cl. 18, n. 2, 3106

Sanitary
Infectious diseases .....cl. 24, 3106
Real estate purchased for purposes of.....3115*a*
Removal of unwholesome substance .....cl. 22, 3106

Schools
Accounts, auditor keeps with congressional township .. 4327
auditor keeps of land in another county.....4334, 4335
congressional township of, how kept 4327
correction of trustee's 4456
funds of divided townships, 4435, 4437
funds separated 4327
inspection of trustee's ..4454, 4455
miscellaneous school funds.. 4403
record of 4442, 4441
Acknowledgment of school mortgages.....n. 1, 4381
Action, see suit, below.
Additional branches, examination of teachers in, n. 7, 4425, 4502
voters determine 4499
Administration of school system .....4406 to 4464
Adoption of text-books, see Books.
Advertisement of unloaned funds 4352*a*
Annexation, effect on school property ..... n. 6, 3197
Anticipation of revenues, n. 8, 4441; n. 1, 4442; n. 1, 4470; n. 2, 4487*a*
Apparatus, trustees provide... 4444
See Furniture below.
Appeals from director to trustee 4506
expulsion of pupil .....n, 1, 4506

Schools (*cont'd*) SEC.
Appeal to county superintendent from trustee..... 4537
contracts, concerning ...n. 3, 4537
courts, jurisdiction of .. n. 3, 4537
dismissal of teachers....n. 3, 4537
district abolishing .....n. 7, 4499
final 4537
joint grade school .....n. 1, 4446
jurisdiction of courts....n. 3, 4537
location of school-house, n. 2, 4537; n. 4, 5, 4499; n. 23, 4444
notice of .....n. 1, 4537
power of county superintendent .....n. 1, 4537
private schools .....n. 3, 4509
procedure.....n. 1, 4537
right to bring action, does not prevent 4429
transfer .....n. 1, 4473
trustees discretion .....n. 5, 4499
witnesses .....n. 1, 4537
Appeal to state superintendent, 4429, 4538
bond .....n. 1, 4537
notice of .....n. 1, 4537
procedure.....n. 1, 4538
rules 4538
time .....n. 1, 4537
transcript .....n. 1, 4537
trial .....n. 2, 4537
witnesses .....n. 1, 4537
Apportionment by state superintendent.....4477, 4482
auditor of state, when makes, 4484*a*
auditor's report of revenue ready for 4478, 4479
diminished, when 4481
divided congressional township 4480
failure of auditor to report to, penalty 4481
how made 4477, 4482
instructions concerning same, n. 1, 4479
payments to counties 4484
printed statements of 4483
sinking fund interest 4487
unapportioned balances..... 4485
when made 4477
Apportionment by county auditor 4486
basis of..... 4432
county superintendent's duty as to 4432
districts to, not made....n. 3, 4499
dog fund, see below.
instructions to county auditors ..... n. 1, 4479
method of making is valid, n. 1, 4486
report of state superintendent 4486

Schools (*cont'd*) SEC.
rules for making.....n. 4, 4486
town recently incorporated, n. 5, 4486
validity of.....n. 1, 4486
Apportionment of loans 4402
Apportionment by trustee among schools of township, n. 3, 4499
Appraisement of school lands for sale 4344
forfeited lands.....4352*b*
land offered for mortgaging, 4371, 4372
lands remaining unsold..... 4352
re-appraisement 4352, 4352*b*
Appropriations, permanent, 4408, 4412, n. 1, 4423
state normal school 4558
Appropriations by county commissioners because of deficit ..... n. 2, 4326, 4399
Assault and battery, teacher may be guilty of.....n. 9, 4501
Astray fund belongs to schools.....n. 1, 4325; 4325*a*
Attorney, state superintendent may employ.....n. 2, 4413
fees of, county must pay..n. 5, 188
Attorney-general, power to bring suit .....n. 1, 4435
Auditor of county, acknowledgments, may take..... 4379
accounts of congressional township, keeps 4327
appoints township trustee, when 4440
apportions revenues in county, 4486
bids mortgaged lands in 4393
bond of trustee, approves, 4439, 4440
bond of county superintendent, approves 4424
casting vote, gives, when... 4424
certificate of sale, issues when old one lost..... 4360
deed for land sold, makes ... 4395
duty as to congressional funds.....4333 to 4337
duty as to transfers ...n. 5, 6, 4473
duty in election of county superintendent, n. 3, 4, 5, 10, 11, 17, 4424
fees for making loans. 4382
for transfer of congressional fund 4337
for sale of land..4345, n. 2, 4391
income of land, reports of received by..... 4328
interest, duty as to when unpaid 4383
loans to himself void ... n. 2, 4334
loans funds 4370, 4381

Schools (*cont'd*) SEC.
miscellaneous fund account, 4403
distributes 4404
notice of deficits 4326
of sale of lands 4391
oaths, may administer 4379
payments, makes to counties, 4484*a*
penalty for failure to report, 4481
as to miscellaneous fund.. 4405
relator in suits, when ...n. 1, 4390
reports condition of funds .. 4398
of lands in adjoining county 4336
revenue for apportionment 4478, 4479
resale, makes of land ...4347, 4351
sells mortgaged lands ..4383, 4392
school lands 4345
statement as to number of children 4333
suits, brings for deficits, 4355, 4390
to recover possession of lands mortgaged 4383, 4383*a*
tax extends on duplicate.... 4468
trustees' books, examines, 4454, 4455
warrant, draws for borrowed funds..... 4387
waste, suit brings for 4350
Auditor of state, draws warrant for county funds 4484
for expense of state board of education..... 4423
Ballots for sale of land, kind.. 4341
Bank tax, part of school fund, 4325, 183
Bequests to schools..... 4514
bonds to aid .....4513 to 4516
Bible not excluded from 4493
decisions concerning use of in .....n. 3, 4493
how used .....n. 1, 4493
Blanks, state superintendent prepares..... 4415
furnishing county superintendent with .....n. 2, 4433
Board of county commissioners, accounts of trustees, examines 4454, 4455
boundaries of township, determine .....n. 1, 4331
deficit in funds, makes up... 4326
dismisses county superintendent 4424
examine report of auditor and treasurer 4399
interest, pays up 4326
lands, orders sold 4345, 4368
report concern'g loans, makes, 4400
school-house, can not build, n. 1, 4514
school taxes, no control over, n. 3, 4467

Schools (*cont'd*) SEC.
special sessions, power of at ..... n. 11, 4441
vacancy in trustee's office, fill 4440*a*
Board of education, see County Board of Education below; see State Board of Education below; see School Commissioners below.
Bond on appeal 4538
Bond, official, borrowed money, does not cover 4440*n*
school board 4439
school trustees 4440
superintendent of county, 4424, 4464*j*, 4464*v*
women's 4541
Bonds for library building.... 4526*f*
tax to pay 4526*g*
Bonds for school buildings.... 4488
bequest, aid to ..... 4514 to 4516
by whom issued ..... n. 7, 4488
city may sell 4488
consent of city council necessary 4491
constitutionality of law, n. 3, 7, 4488
donations, to aid ..... 4514 to 4516
injoining issue of ..... n. 4, 4488
legalizing issue of ..... n. 6, 4490
liability of trustees for .. n. 6, 4488
petition for, not necessary to issue ..... n. 2, 4488
proceeds of, use 4489
sale of by township trustee, 4516
school commissioners may issue 4460, 4492*a*
special tax, to pay 4490
township trustee may issue, when ..... 4514 to 4516
surplus revenue paid on 4492
towns may sell 4488
transferees taxed to pay . n. 5, 4488
void, not, school-house located outside town .... n. 5, 4490
Books, advertising for bids, 4464*b*, 4464*o*
advertising for manuscripts, 4464*d*
affidavit of bidder 4464*b*
appropriations for expenses, 4464*n*, 4464*t*
attorney's fee, when recoverable, 4464*i*, 4464*k*, 4464*u*, 4464*w*
bids to furnish 4464*b*, 4464*o*
conditions of 4464*b*
investigation of 4464*c*
opening 4464*c*
rejection of 4464*b*
bidder, interest of 4464*b*
bond of county superintendent 4464*j*, 4464*v*
branches of study 4464*a*

Schools (*cont'd*) SEC.
cash, sold for 4464*g*
change of 4436
constitutional, act of 1889 is, n. 1, 4464*b*
contract for printing manuscript 4464*d*
state not liable on 4464*e*
not to be impaired, ... 4464*cc*
contractor, damaged books, charged with 4464*z*
payment 4464*e*, 4464*k*
reports to 4464*k*
requisitions upon 4464*g*
re-shipment to 4464*q*
ships books 4464*g*, 4464*z*
copyright, gift to estate 4464*b*
county board of education considers 4436
county superintendent, laws, distributes 4464*bb*
liability for failure to report 4464*k*
makes requisition for 4464*g*
notifies trustees 4464*g*
reports to contractor 4464*k*
sells, ... 4464*g*
suits, brings 4464*i*
damaged, returned to contractor 4464*z*
debt, can not be contracted for by trustee 4464*q*
defective, returned to contractor 4464*z*
effect of act of 1889 ..... n. 1, 4436
embezzlement 4464*m*, 4464*x*
excessive charge for, penalty, 4464*l*
free, when 4464*r*
furnishing 4464*g*
grading 4464*a*
grammar, advertisement for, 4464*o*
gift to state 4464*b*
history of United States, advertisement for 4464*o*
interest of bidders 4464*b*
kind and requisites 4464*a*
labels for 4464*aa*
laws, distribution of 4464*bb*
legislature may provide, n. 16, 4425
number required, certificates to 4464*g*
old books, disposition of 4464*g*
orders for 4464*g*, 4464*p*
packages of, not to be broken, 4464*z*
partisan, forbidden 4464*a*
pay of contractor 4464*q*, 4464*e*
of trustee 4464*s*
payments, failure to make .. 4464*x*
report concerning 4464*s*
physiology, advertisement for, 4464*o*
poor receive free, 4464*r*: 4496*a*: 4496*b*: n. 11, 4444

Schools (*cont'd*) SEC.
preserved by trustee, how...4464*z*
price furnished at to state, 4464*c*; 4464*o*
to patrons.....4464*g*
printed on cover 4464*aa*
trustee liable for 4464*g*
printing, contracts for.....4464*d*
proclamation of governor...4464*f*
publishing, state may.....4464*d*
receipts for books....4464*q*; 4464*g*
repeal of laws.....4464*n*
report of sales.....4464*q*
report of sales, failure to make 4464*u*; 4464*i*
of county superintendent 4464*v*
of trustee of sales 4464*h*
to contractor 4464*k*
requisitions for books, 4464*k*; 4464*g*
limited 4464*p*
sectarian forbidden 4464*a*
shipment, how made.....4464*z*
size 4464*a*
spelling book, advertisement for 4464*o*
state board of education a board of commissioners...4464*a*
duties 4464*a*; 4464*o*
may sell old books 4464*g*
state superintendent makes requisition for books 4464*g*
prints and distributes laws, 4464*bb*
supplemental act of 1891....4464*cc*
suit against trustee.....4464*u*
against county superintendent 4464*v*
trustee certifies number required.....4464*g*
compelled to use n.2, 4464*h*
damaged, returns.....4464*z*
furnishes patrons.....4464*g*
liability concerning..... 4464*u*
overcharging 4464*l*
pay.....4464*r*
payment over of money received 4464*h*
personally liable.....4464*q*
procures books 4464*g*
reports payment.....4464*s*
reports number on hand ..4464*s*
reports number sold.....4464*q*
requisitions for, makes....4464*p*
uniform use made of.....4464*y*
use of to be uniform.....4464*y*
Branches taught, district meetings determine 4499
German 4497
what shall be taught...4497; 4499
Boundaries of township, how regulated 4331
Bureau of statistics, county superintendent furnishes statistics, 5720; n. 3, 4431; n. 4, 5, 4433

Schools (*cont'd*) SEC.
Buildings, see Houses.
Calendar, as to term, week, month..... 4495
Care of school property, n. 16, 17, 4444; n. 1, 4509
Cash sales of school lands, n. 2, 4393
Certificate of liens on land 4375
of purchase, 4353; 4356; 4357; 4360
Children, age of..... 4472
colored, how provided for... 4496
enumeration of, 4430; 4433; 4472 to 4476
prizes to, of library stock ... 3803
Charts, county board of education considers..... 4436
Classification of schools....n. 4, 182
of pupils .....n. 14, 4444
Colored children, convenient schools, entitled to, n. 2, 4496; n. 5, 182
discretion of school officers, n. 4, 4496
distinction can not be made . 4496
enumeration of.....n. 7, 4472
equal privileges, must have, n. 3, 4496
graded schools, may attend . 4496
laws concerning, valid ..n. 1, 4496
separate schools for.....n. 9, 4496
schools for..... 4496
Commissioners, see Board of County Commissioners.
See School Commissioners.
Common council authorizes issue of bonds for..... 4488
appoints school board 4439
levies local tuition tax...n. 1, 4469
Conditional deed..... 4491
Congressional township, account of, how kept 4327
apportionment of loans among..... 4402
boundaries of 4331
care of lands of.....n. 16, 17, 4444
children in, enumeration of . 4333
funds of .....4325 to 4337
diminished, may not be.... 4486
consolidated .....n. 1, 183
grant to, a contract .....n. 7, 188
lands of .....4328 to 4330
revenue from, how apportioned 4480
Contracts of trustees generally, n. 13, 4444
complaint against, what must show.....n. 18, 4437
county board of education can not make .....n. 4, 5, 4436
dictionaries, purchase of, n. 12, 4444
employment of teacher, n. 19, 4437

Schools (*cont'd*) SEC.
house, school trustee makes, n. 2, 5, 4437
how made ..... n. 13, 4444
intent to bind township .n. 3, 4437
interest of trustee in, forbidden .....(R. S. 1881, § 2049.)
maps ..... n. 12, 4444
notes, see.
old board may bind new board by ..... n. 13, 4439
powers to make 4437; 4438
teachers, see.
Contributions to joint schools, n. 3, 4446; 4513
Corporal punishment .....n. 9, 4501
Corporations may be assessed for schools..... 183
Corporations, school, distinct from civil ..n. 2, 4437; n. 2, 4438
city is for school purposes... 4438
designations in suit .....n. 3, 4438
names of, generally .....n, 4438
town is for school purposes.. 4438
Costs, when not allowed in suit, 4535
County liable for school fund.. 4326
County auditor, see Auditor.
County board of education, members of 4436
contracts, can not make, n. 4, 4436
county superintendent presides..... 4436
course of study, prescribe, n. 3, 4436
duties 4436
meetings ..... n. 2, 4436
members..... 4436
quorum ..... n. 3, 4436
rules, prescribing..... n. 3, 4436
County commissioners, county superintendent, remove... 4424
deficit, make good .....n. 2, 4326
funds, examines reports of .. 4399
report condition of funds, 4336; 4400
sales of lands ordered by, n. 1, 4345
school-house, can not build, n. 1, 4514
school taxes, no control over, n. 3, 4467
settlement with school officer, 4399
trustee's accounts, inspects, 4454; 4456
trustees, may remove..... 4456
See Board of County Commissioners.
County institute, see Institute (County).
County superintendent, accounts of trustees examines.....4454; 4455
address of, sent to state superintendent..... 4424

Schools (*cont'd*) SEC.
agent for sale of books, can not be 4424
allowance of claim, effect, n, 3, 4433
appeal, to and from. See appeal.
apportionment, superintends, 4432; 4434
blanks for ..... n. 2, 4433
bond and approval, 4424 and n. 20, 4424
failure to give.....n. 19, 4424
under acts of 1889 and 1891 .....4464*j*; 4464*r*
books, see.
chairman of county board of education..... 4436
charges preferred against.... 4424
city schools, has no control over..... 4429
course of study, when may arrange .....n. 5, 4429
claims, collects..... 4435
compensation 4433
course of study, arranges, n. 5, 4429
dismissal, appeal upon, n. 9, 4424
dockets, examines..... 4435
duties, generally..... 4429
in examinations..... 4425
as to school fund 4435
legislature may prescribe, n. 6, 4436
election, when..... 4424
ballots .....n. 10, 4424
casting vote .....n. 5, 17, 4424
disputed .....n. 8, 4424
evidence of .....n. 10, 4424
illegal vote .....n. 16, 4424
meeting of trustees to elect, n. 3, 4424
mode of .....n. 4, 4424
quorum necessary,....n. 2, 4424
record of.....n. 10, 4424
regularity of .....n. 15, 4424
reported to state superintendent 4424
trustees elect 4424
turstee voting for himself, n. 18, 4424
who elect him .....n. 11, 4424
elevates standard of schools 4429
eligibility .....n. 6, 4424
enumeration, duty to make.. 4431
examines teachers..... 4425
fines, collects..... 4435
forfeitures, collects 4435
institutes, holds 4523
interest, collects.....4434; 4435
laws, distributes.....4464*bb*
liability for refusing license, n. 13, 4425
license fees, may collect..... 4435
licenses, see Licenses.

Schools (*cont'd*) SEC.
libeling 4436
mandate to compel surrender of records .....n. 13, 4424
member of county board of education 4436
mileage, not entitled to, n. 1, 4433
oath 4424
office for .....n. 3, 12, 4433
opinions, gives 4429
orders of state board, carries out 4429
pay 4433
postage ..... n. 2, 4433
private examination, can not make 4427
private schools, reports concerning .....n. 2, 4431
qualifications of 4424
receipt, takes from successor 4428
recognition by state superintendent, effect .....n. 7, 4424
recognizances, collects 4435
record, keeps 4428
records, examines 4435
report of apportionment 4432
contents 4431
failure to make 4431
special 4431
statistics 4431
to state board of education 4428
transfers 4468
resignation, withdrawal, n. 14, 4424
revokes license 4426
school examiner, duties of performs 4424
stationery, furnishing...n. 2, 4433
statistics, report, n. 3, 4431; n. 4, 5, 4433
suit, institutes 4435
teacher, examines 4425
township institute, attends .. 4429
vacancy in office 4424; 4464*v*
visits schools 4429
duty to make .....n. 2, 4429
number .....n. 1, 4433
women ineligible to ....n. 1, 4540
Course of study, how prescribed, n. 3, 4436
by county superintendent, n. 5, 4429
by trustee...n. 14, 4444; n. 5, 4429
Courts, jurisdiction of.....n. 3, 4537
not abridged by school law ... 4429
Damages, trustee liable for ten per cent.....4441 and n. 7, 4441
Debts for future supplies..n. 24, 4444
liability of township upon, n. 8, 4441
orders without consideration are void.....n. 20, 4444
tax to pay 4471
Deed, evidence of what....n. 2, 4395
for forfeited lands 4395

Schools (*cont'd*) SEC.
recording .....n. 1, 4395
sale, see.
tender of.....n. 3, 4395
trustee executes on sale of school-house 4511
what is a conditional deed, n. 4, 4508; n. 1, 4511
when title vests in state without 4397
Deficit on foreclosure of mortgage 4326
in school funds and revenues, 4326
Dictionaries, purchase of..n. 12, 4444
Director, appeal from..... 4506
appointment 4498
death .....n. 2, 4498
duties 4503
election 4498
excludes pupil..... 4505
house, has charge of..... 4504
janitor, employs.....n. 3, 4504
local agent acts as .....n. 1, 4503
meetings, presides at 4503
oath 4498
removal 4498
repairs, makes 4504
resignation .....n. 2, 4498
selection .....n. 2, 4498
vacancy 4499
visits schools..... 4505
Discipline, teachers' powers, n. 4, 4505
conduct out of school....n. 4, 4505
corporal punishment....n. 9, 4501
Distance to school must be reasonable.....n. 2, 4496
Districts, abolished, n. 21, 4444; n. 7, 4499; n. 1, 4437
choice of by patron.....n. 4, 4472
corporation, was not ....n. 3, 4499
council creates in large city, 4458; 4460
meetings in .....n. 1, 4499
called..... 4499
persons forming..... 4472
voters 4498
Distribution of fund..... 185
Divided school section, what trustee manages 4330
transfer of power of..4332 to 4336
Division of revenue on formation of town, n. 5, 4486; n. 3, 4487*b*
Dockets, county superintendent examines 4435
Dog fund, anticipating.....4487*a*
distribution 4487*a*, 4487*b*
explanation concerning.....4487*a*
surplus 4487*a*, 4487*b*
town, when may take from township .....n. 3, 4487*b*

See Taxation.

Schools (*cont'd*) SEC.

Donations to build school-house, 4514
bonds to aid.....4514 to 4516
Doors must swing outward...4500*a*
Election, see Sale.
Embezzlement, liability for school-books.....4464*x*
mixing funds, n. 3, 4442; n. 1, 4441
use of money is not.....n. 3, 4440
Employment of teachers..... 4444
Eminent domain, to appropriate land for school-houses, 4517 to 4519
Enumeration, age of pupils enumerated..... 4474
attachment to schools..... 4472
change of schools, when allowed..... 4472
choice of schools.....n. 4, 5, 4472
colored pupils..4472 and n. 7, 4472
congressional in township, number in..... 4333
county superintendent takes. 4430
detaching from schools..n. 4, 4472
districts formed by..... 4472
failure to make affects revenue, 4431
filed with county superintendent..... 4475
how made..... 4472
minor, when of age.....n. 1, 4472
non-resident pupils .....n. 3, 4472
oath as to..... 4475
report as to township, in two or more counties..... 4476
residence of minor.....n. 2, 4472
special report as to congressional township.....n. 1, 4476
state superintendent's report concerning 4409; 4410
township in two or more counties 4476
transferred person included, 4472 and n. 6 4472
trustee makes 4472
when made 4472
who may be enumerated, n. 1, 4472
Escheated lands, n. 4, 183; n. 7, 4325
Estimate of expense of building, 4500
Estoppel, acquiescence in sale of school lands.....n. 1, 4354
indebtedness, contesting, n. 15, 4437
Estray fund, n. 4, 183; n. 1, 4325, 4325*a*
Examination, additional branches .....n. 7, 4425
amusement, not for....n. 10, 4425
conduct of.....n. 2, 4427
county superintendent makes, 4425
evidence of character, n. 2, 10, 4425
incompetency to govern school.....n. 10, 4425
judicial act in granting license, n. 12, 4425

Schools (*cont'd*) SEC.

license, see.
private forbidden..... 4427
professional license, 4472 and n. 9, 4425
public must be..... 4427
record of license 4428
special fitness...n. 4, 5, 4425; 4502
traffic in questions.....4421*a*
when not necessary..... 4425
who should make.....n. 11, 4425
Execution of process..... 4536
Expenditure, record of kept by trustee 4442; 4441
Expulsion of pupil..... 4505
appeal from..... 4506
by trustee of town or city, n. 1, 4505
teacher, see.
truancy .....n. 1, 2, 4505
Fees, deducted from school fund, can not be.....n. 3, 4, 4325
auditor, for transfer of congressional funds, township, 4337
auditor's for sales 4345
loans, rate for..... 4382
part of tuition fund..... 4325
treasurer's for sales..... 4345
Females' eligibility to school office 4540
bond 4541
validity of law.....n. 1, 2, 4540
Fines belong to school fund, 183; 4325 and n. 5, 4325; (R. S. 1881, § 4024)
county superintendent collect, 4435
Fletcher, Prof., death of.. n. 2, 4406
Forfeitures belong to school fund.....183; 4325
county superintendent collects..... 4435
effect of.....n. 3, 4347
Forms, state superintendent prepares..... 4415
book-keeping, superintends . 4416
Fuel, director furnishes....n. 2, 4504
Fund, account of..... 4327
advertised for loaning 4352*a*
animals impounded, proceeds to.....(R. S. 1881, § 2643)
baggage sales by county commissioners, (R. S. 1881, § 2901)
bank tax..... 4325
clerk violating marriage act, (R. S. 1881, § 5332)
common school fund defined, 4325
congressional township, 4325 to 4337
corporations may be taxed for, 183
county liable for... 186; 187; 4326
auditor may sue for 4404
commissioners, duties as to 4399; 4400

Schools (*cont'd*) SEC.
deductions from, recoverable,
deficit in, notice of, n. 4, 4325
4326 and n. 2, 4326
deficiency on sale of land....4352*c*
dentistry, fines go to,
(R. S. 1881, § 4254)
diminished, shall never be,
184; 4325
distribution and report as to, 4404
from another county 4334; 4335
election bets, penalties to
(R. S. 1881, § 4685)
enhancing.....n. 4, 4326
escheats.....183, n. 7, 4325
estray funds.....n. 1, 4325; 4325*a*
expense of.....notes, 188
fees of officer can not be deducted from.....n. 3, 4, 4325
fines against recorders goes to .....(R. S. 1881, § 5937)
fines generally 4325 and n. 5, 4325
forfeitures 4325
how created..... 183
interest re-invested, when.. 186
county must pay 4326
investment and distribution, 185
inviolate 188
liquor license .....n. 6, 4325
loans of, interest 4369
lost funds .....n. 1, 4399
mandamus to compel proper application.....n. 5, 4325
miscellaneous fund, account of..... 4403
policy of the law .....n. 4, 187
principal and income of 184
property of, not taxable..... 6276
railroad aid stock to, when,
(R. S. 1881, § 4073)
re-adjustment..... 4337
re-investment for county, when, 186
rents distributed.....n. 1, 4328
report as to..... 4398; 4400; 4401
saline fund 4325
school lands belong to..n. 1, 2, 4327
seminary fund 4325
separation of.....n. 1, 4327
sinking fund, interest of to.. 4487
State lands, damages go to
(R. S. 1881, § 5242)
State superintendent supervises, 4413; 4411; 4409; 4410; 4408
suit for loss of.....n. 1, 4399
swamp lands..... 4325
taxes on corporations..... 4325
two distinct funds .....n. 1, 4325
what constitutes.....183; 4325
Furniture, county board of education, duty to..... 4436
indispensable articles...n. 12, 4444
providing private school with .....n. 7, 4499

Schools (*cont'd*) SEC.
tax for..... 4467
trustee provides,
4444 and n. 10, 4444
General laws must be..118; n. 2, 182
German language taught..... 4497
duty compulsory ...n. 3 to 6, 4497
license of teacher ..... n. 5, 4425
Governor, member state board of education 4420
Graded schools, admission of pupils to.....n. 15, 4444
buildings for..... 4446
definition.....n. 14, 4444
management..... 4446
pay of teacher.....n. 15, 4444
power to organize.....n. 14, 4444
purchase of land for..... 4446
title, how held..... 4446
trustees establish..... 4444
Hanging doors 4500*a*
Highway, taking school grounds for .....n. 5, 4508
Holidays, teacher paid for, n. 6, 4501
Houses, adjacent township, building with.....4510 to 4512
appeal from location of, n. 2, 4537
appropriation of school ground for highway ..n. 5, 4508
bonds for in large city 4460
in city or town.....4488; 4489
care of,
n. 1, 4059; n. 2, 4510; n. 17, 4444
civil town can not build,
cl. 17, n. 1, 3333
completion in city or town, 4488
condemnation proceedings for.....4517 to 4519
conditions before building in city or town..... 4491
control of township house within town.....n. 3, 4508
county can not build,
n. 3. 4444; n. 1, 4514
custody of in trustee...n. 16, 4444
debts, tax to pay 4471
deed for, how made ....n. 1, 4511
doors of, swing out.....4500*a*
extra territorial .....n. 4, 4508
formation of town, effect upon.....n. 2, 4508
fuel for .....n. 2, 4504
janitor for .....n. 3, 4504
leasing, trustee can not, n. 6, 4509
location of .....n. 9, 4444
appeal from .....n. 4, 5, 4499
is for trustee.....n. 1, 4519
within limits of corporation .....n. 5, 4490
mandate to compel location,
n. 6, 4499
petition for, n. 23, 4444; n. 1, 4500
to sell 4499

Schools (*cont'd*) SEC.

possession of, who has ..n. 1, 4504
removal, optional with trustee 4499; 4500
repairing..4504 and n. 2, 4504 4499
voters direct 4499
sale of, when..... 4511
school commissioners may build .....n. 2, 4460
school-house not owned by township.....n. 22, 4444
site for, proceeding to obtain, 4517 to 4519
special tax to build in city or town..... 4490
surplus special revenue in city or town 4492
tax for..... 4467
title to, how taken..... 4508
conditional.....n. 4, 4508
when township changed, n. 1, 4508
town may build and repair, cl. 17, 3333
transfered person, liable to tax for.....n. 4, 4438
trustee locates..n. 4, 5, 4499; 4444
builds .....n. 2, 5, 4437
furnishes .....n. 10, 4444
use for religious purposes, 4509 and n. 3, 4509; 4510 and n. 1, 3, 4510
for private school 4509
report of trustee concerning.....n. 1, 4509
voters direct repairs 4499
Indiana University, appropriation for .....n. 3, 4420
Indigent children, books for, 4496*a*; 4496*b*
Injunction against cutting timber..... 4346
prosecuting attorney brings action for .....n. 2, 4346
Institute (county) allowance for, 4521
pay of county superintendent.....n. 1, 4521
schools closed during 4522
sessions of 4523
Institutes (township) attendance compulsory ....n. 3, 4520
manner of holding 4520
monthly sessions..... 4520
pay for attending..... 4520
teacher must take part, n...2, 4520
trustee notifies teacher of, n. 1, 4520
Interest, accounts of, how kept, 4327
board of county commissioners look after 4399
county liable for, 4434 and n. 4, 4434; 4326
county superintendent may collect..... 4435

Schools (*cont'd*) SEC.

county superintendent, payments of, superintends.... 4434
failure to pay 4383
money unloaned, county pays on.....n. 3, 4326
rate of 4369; 4393
sinking fund interest distributed..... 4487
state superintendent may collect..... 4326
when trustee not entitled to on fund.....n. 4, 4440
Investments unsafe, duty to, n. 1, 4400; n. 1, 185
Janitor, teacher entitled to, n. 3, 4504
Joint graded school, adjacent township building with... 4513
establishment.....n. 1, 4, 4446
management .....n. 2, 4446
title how held.....n. 1, 4513
trustees act as individuals, n. 5, 4446
Judgment against trustee, damages..... 4441
kind in action on loan 4390
lien on land held by certificate .....n. 1, 4353
rate of interest upon..... 4369
Judicial notice, name of township .....n. 10, 4437
Jurisdiction of courts over school matters .....n. 3, 4537
Kindergartens 4497*a*
Knowledge and learning essential to general government, 182
Landlord, trustee of township is of school lands..... 4338
Lands, adverse possession of, n. 4, 4328
appraisement for schoolhouses .....4517 to 4519
congressional township, management of 4444
custody..... 4328
of divided school section 4330; 4332
divided school section 4330
drainage law, effect upon, n. 6, 4328
income, report of trustee.... 4328
landlord, trustee has powers of..... 4338
leasing..... 4329
sale of, see.
substituted lands .....n. 5, 4328
taxing when sold..... 4364
timber lands, conditions as to 4346
Large city, school commissioners, has 4458
Laws, publication.....4417 to 4418
Leasing school land, 4329 and n. 1, 4329

Schools (*cont'd*) SEC.

Lecturing, state superintendent does 4411
Legalizing bonds.....n. 6, 4490
sale of lands .....n. 1, 4367
surplus special school revenue 4448
Legislature, power of.....n. 7, 182
Levy of taxes for schools, need not be uniform .....n. 6, 182
in town .....cl. 19, 3333
Library in city and town, 4524; 4460
bonds to construct in large city 4526*f*; 4526*g*
children, prizes of stock in same 3803
commissioners establish 4460
documents for 4418
free 4524
management..... 4436
realty for 4526; 4526*a*
rules for 4524
state-prison, books for..... 4528
tax to maintain, 4524; 4525; 4526*b*; 4526*c*
Library (township) books for.. 4527
distribution of books for 4528
documents..... 4418
families may use 4531
open when..... 4533
pay of librarian .....n. 1, 4532
place where kept..... 4532
rules as to use of..... 4530
state prison, books use..... 4528
tax to support.....n. 2, 4527
trustee has charge of 4529
See Libraries.
License, additional .....n. 6, 4425
antedating .....n. 10, 4425
certificate, giving .....n. 14, 4425
consecutive .....n. 8, 4425
essential to employment, 4501 and n. 1, 4501
examination for..... 4425
expiration during term of school 4501
illegally issued.....n. 6, 4425
judical act of issuing ..n. 12, 4425
length of time given for 4425
liability of county superintendent for refusing..n. 13, 4425
life license..... 4422
limited to county 4427
loss of certificate of.....n. 3, 4425
minors .....n. 3, 4501
professional.....n. 2, 4422
record of.....4428; n. 15, 4425
revoking .....4426 and n. 1, 4426
school commissioners may issue 4460; 4464
special.....4502; n. 5, 4425
state board grants 4422
vested right in .....n. 2, 4426

Schools (*cont'd*) SEC.

License fees, county superintendent collects 4435
liquor .....n. 2, 6, 4325
part of tuition fund..... 4325
Lien of mortgage not recorded, n. 2, 4381
tax inferior to school mortgage, n. 3, 4393; n. 4, 4383; n. 1, 4380
Liquor license fees.....n. 2, 6, 4325
Loan, abstract of title 4370
acknowledgments and oaths, 4379
advertisement for 4352*a*
affidavit of borrower..... 4376
apportionment of 4402
appraisement 4371; 4372
of mortgaged lands 4378
appraisers 4372
bona fide purchaser.....n. 1, 4381
bond to protect loan..... 4375
auditor makes..... 4370
loaning to himself....n. 2, 4334
authority to make .....n. 14, 4437
certificate as to liens, 4375 and n. 1, 4375
as to indebtedness....n. 15, 4437
collection on default.....4383*a*
damages, when recoverable.. 4386
examination of..... 4399
execution against borrower . 4390
extra-territorial 4373
fees for making 4382
fund specified 4402; 4384
inhabitants of county preferred 4373
interest rate..... 4369
failure to pay 4383; 4390
irregularities, does not avoid, n. 2, 4375
judgment for deficiency, form, 4390
rate of interest on 4390
liens..... 4375
bond to protect loan against, 4375
certificate as to..... 4375
priority of..... 4380
limit 4374; 4378
miscellaneous account..... 4403
mortgage, cancelling....n. 3, 4381
foreclosure of .....n. 6, 4383
form..... 4385
fund specified 4402
indorse on of payment.... 4389
recording .....n. 1, 4381
registry of .....n. 2, 4380
release of without payment .....n. 5, 4383
satisfaction of..... 4389
See Mortgage.
note, form..... 4386
fund specified in..... 4402
sufficiency.....n. 1, 4386
suit on by auditor 4383

Schools (*cont'd*) SEC.
oath of applicant 4376
oaths, auditor may administer, 4379
outside county 4373
payment by borrower..... 4388
auditor must note ....n. 1, 4388
made to county treasurer, n. 2, 4388
to borrower 4387
personal security can not be taken for .....n. 2. 4370
preferred borrowers..... 4373
prior liens .....n. 3, 4375
purchase-money retained as, 4358
quietus on payment 4388
record of mortgage 4380; 4381
rate of interest..... 4369
report of county commissioners.....4400; 4401
sale, see.
satisfaction of mortgage 4389
suit for deficiency 4390
to recover possession 4383
surplus on sale 4392; 4394
tax-title, priority of as lien, n. 1, 4380
time of 4377
title papers 4370
void, when...n. 2, 4334; n. 1, 4370
warrant to borrower for money..... 4387
when due..... 4383
where may be made 4373
Lucrative office, city school trustee .....n. 1, 4439
town school trustee .....n. 7, 4439
Mandamus, admission to schools, n. 8, 4472
application of school funds, n. 5, 4325
approval of bond .....n. 20, 4424
conveyance of school-house, n. 1, 4508
delivery of books to successor .....n. 6, 4441
location of school-house, n. 23, 4444; n. 6, 4499
records, delivery of ....n. 13, 4424
Manual training schools, city may build 4497*d*
regulations concerning 4497*e*
tax for 4497*e*
teacher for.....4497*f*
Maps, contracts for are valid, n. 12, 4444
county board of education considers 4436
Married women may borrow of school fund.....n. 5, 4385
Mechanic's lien, can not acquire on school-house .....n. 25, 4444
Meetings, additional branches determined by 4499

Schools (*cont'd*) SEC.
annual, held 4498
cities and towns have none, n. 1, 4499
director elected at..... 4498
election of teachers at, unauthorized.....n. 2, 4444
how called 4498
legality of, how settled 4499
location of school-houses, n. 4, 4499
notice of..... 4499
petitions to trustees 4499
protest against teacher ..n. 4, 4501
repairs to school-house direct 4499
school-house, may ask for... 4499
studies determined by..... 4499
voters at, 4498 and n. 1, 4498; 4499
Mileage of county superintendent .....n. 1, 4433
state board of education 4423
Minor, employment as a teacher.....n. 2, 3, 4501
residence of .....n. 2, 4472
when of age .....n. 1, 4472
Miscellaneous school fund, how kept 4403
distribution 4404
penalty against auditor as to, 4405
Mistake, correcting in trustee's accounts .....4456; n. 5, 4441
Money, conversion by school officer.....n. 3, 4440
title to .....n. 2, 4440
Month, length of 4495
Mortgage, action to cancel, n. 3, 4381
description of land, n. 1, 4385; n. 10, 4392
foreclosure .....n. 6, 4383
form..... 4385
fund specified in..... 4402
indorsement upon 4389
lien of prior to tax lien..n. 1, 4380
merger of ..n. 10, 4392; n. 2, 4383
presumption as to ownership of land .....n. 2, 4385
priority of 4380
recorded, when so considered, 4380; n. 1, 4381
registry of.....n. 2, 4380
satisfaction, entry upon..n. 1, 4389
subrogation of purchaser under .....n. 9, 4392
tax-title, superior to ....n. 4, 4383
void, when ...n. 2, 4334; n. 1, 4370
wife may borrow.....n. 5, 4385
wife's signature.....n. 3, 4385
See Loan.
Music may be taught .....n. 7, 4496
Neglect of duty by trustee, penalty 4452
Night schools.....4497 to 4497*a*

Schools (*cont'd*) SEC.

Non-residents, admission to schools ....n. 3, 4472; n. 4, 4490
payment of tuition tax ..n. 4, 4490
Notes in borrowing school fund, 4386
fund specified in 4402
sufficiency.....n. 1, 4386
Notes, authority to execute, n. 10, 14, 4437
bank deposits.....n. 13, 4437
city may execute.....n. 10, 4438
executed by trustee without authority.....n. 1, 4438*c*
power to give, n. 8, 4441; n. 19, 20, 4444
school commissioners may give .....n. 2, 5, 4460
void, when .....n. 12, 4437
Notice of sale of land..... 4345
to teachers of institute ..n. 1, 4520
Numbering school-houses 4494
Oaths, administering.....n. 1, 4539
school officers may..... 4539
Officers, women may be..... 4540
Opinions, county superintendent gives..... 4429
state superintendent gives, 4408 and n. 2, 3, 4408
Patrons of school, petitions of. 4499
protest against teacher ..n. 4, 4501
selecting teacher, not authorized to make.....n. 2, 4444
Pay of city or town superintendent .....n. 1. 4445
county superintendent..... 4433
state board of education 4423
Payments to school fund, failure to make..... 4355
auditor of state pays to county 4484
indorsement on certificate, 4362, 4389
quietus for .....4361, n. 12, 4392
to whom made 4361
Paupers, see Poor.
Penalties, auditor failing to report 4481
county superintendent failing to report 4431
trustee, corrupt interest in contracts.....n. 13, 4444
embezzlement.....n. 3, 4442
failure to report..... 4450
failure to serve..... 4453
neglect of duty 4452
Petition of patrons generally.. 4499
to sell land 4339, 4366
Poor children, books for.....4496*a*
county commissioners provide for 4496*b*
enumeration of.....n. 1, 4496*a*
matron of orphan asylum, duties of.....4496*a*

Schools (*cont'd*) SEC.

Private schools, public funds can not be used for....n. 4, 4509
report concerning ....n. 1, 2, 4509
school-house used for..... 4509
Process, how served..... 4536
Professional license 4425
Property, title to.. n. 12, 4438; 4508
sale of without, effect of 4367
trustee cares for..... 4444
trustee sells, when..... 4511
Prosecuting attorney, action for injunction, brings ....n. 2, 4346
investigates failure of title .. 4367
sues auditor..... 4405
suits, brings..... 4413
Protest against teacher 4501
opportunity for.....n. 4, 4501
Public square used for school-house 3386
Pupil, authority of teacher over .....n. 3, 4, 4505
expulsion of, n. 11, 4501; n. 1 to 4, 4504; 4505; n. 1, 4506
punishment of ....n. 1, 9, 11, 4501
refractory, expelling ....n. 1, 4505
rules and regulations for, n. 11, 4501
truant, expelling.....n. 2, 4505
violation of rules .....n. 11, 4501
Purchase of land, certificate of, 4353, 4365
rights of person making 4354
Questions for examination, how prepared .....n. 1, 4421
traffic in 4421*a*
Quietus, auditor issues 4361
repayment of loan..... 4388
Quieting title, when may be had .....n. 12, 4392
Races, no discrimination between allowed..... 4466
Real estate, title in school corporation 4508
Receipts, record of kept by trustee 4441, 4442
Record, appeals, n. 1, 4537; n. 1, 4538
county board of education, n. 3, 4436
county superintendent..... 4428
deed..... 4395
examination by county superintendent 4435
mortgage 4380
receipts 4442, 4441
sale of lands 4340
school commissioners 4462
trustees..... 4442
state board of education 4420
transfers .....n. 6, 4473
Recorder, fees for making loans, 4382

Schools (*cont'd*) SEC.

Redemption of forfeited lands, n. 3, 4346
Refractory pupil, see Pupil.
Religious beliefs not a subject of inquiry.....n. 2, 4493
Removal of county superintendent of 4424
director of 4498
scholar, of 4505
school-house, of..... 4499
teacher, of..... 4501
trustee..... 4456
Rents, deduction from tuition fund..... 4328
how paid 4329
liability of county for...184 to 186
payable in advance 4329
payment to county 4328
report concerning 4328
Repairs, voters direct..... 4499
See Houses.
Reports of county auditor.
auditor to state superintendent..... 4478
contents of..... 4479
failure to make 4481, 4404
concerning school funds 4398
county commissioners examine..... 4399
division of funds of divided townships 4336
names of trustees and county superintendent.....4424, 4440
revenue for apportionment, 4478, 4479, 4486
Report of county commissioners.
condition of funds..... 4400
recorded..... 4401
Report of county superintendent.
annual 4431
apportionment 4432
basis of apportionment 4432
contents..... 4431
enumeration..... 4431
financial and statistical 4450
licenses granted..... 4429
statistics, furnishes..... 4431
transfers..... 4468
Report of state superintendent.
to governor..... 4409
to legislature 4410
may require reports of officers 4414
Report of teachers.
contents 4449
must make 4449
penalty for not making..... 4449
private school..... 4509
Report of transfers must be made..... 4473

Schools (*cont'd*) SEC.

Report of trustees.
annual 4443
contents..... 4441
copy sent to state superintendent..... 4441
county commissioners examine .....n. 11, 4441
enumeration.....4475, 4476
financial and statistical, 4441, 4450
income of lands 4328
penalty for failure to make.. 4451
school land 4328
to county superintendent ... 4450
Re-sale of forfeited lands, n. 1, 4347, 4344
Residence of county superintendent....n. 6, 4424; n. 1, 4540
children enumerated, n. 2, 3, 7, 4472
city or town school trustee, n. 4, 4439
Resignation of teacher....n. 8, 4444
trustee.....n. 3, 4439
Revenues, accounted for by trustee 4441
anticipating ..... 4442; n. 1, 4470
apportionment among schools, see Apportionment.
distribution of, to counties .. 4484
division on formation of town .....n. 4, 4438; n. 2, 4508
dog fund, see; see also Taxation.
equalization of state's, constitutional, n. 3, 4328; n. 1, 4486
lands of surplus fund, how sold 4368
local tuition, how applied, 4469, 4470
special school..... 4467
state's, how paid.....n. 2, 4325
surplus, special school..4447, 4492
tuition revenue ..... n. 2, 4442
use of state's .....n. 2, 4442
Revocation of teacher's license, see License.
Rules and regulations, adoption.....4460; n. 1, 4501
when unreasonable .....n. 3, 4537
Sale of mortgaged lands 4392
appraisement, more than one, n. 1, 4393
amount, sale for more than due .....n. 8, 4392
bid in by auditor, when, 4393, and n. 4, 4393
credit, when can only be made upon 4393
deed for 4395
deed, when unnecessary 4397
description of land sold, n. 10, 4392
division of lands sold..n. 1. 4392

Schools (*cont'd*) SEC.
law governing.....n. 1, 4383
manner of making.....4392
mergerer of mortgages in, n. 12, 4392; n. 2, 4383
notice of ..... n. 1, 3, 4391
offer ..... n. 7, 4392
power to make.....n. 1, 5, 4392
quieting title.....n. 12, 4392
re-appraisement.....n. 1, 4393
record of deed 4395
redemption..... n. 3, 4346
regularity of ..... n. 4, 4392
several tracts, how sold, n. 11, 4392
statement and record of, 4396 and n. 1, 4396
statute must be strictly followed ..... n. 1, 4383
subrogation of purchaser, n. 9, 4392
suit for deficiency, n. 4. 4390; n. 3, 4393
surplus .. 4392 and n. 2, 4393, 4394
terms..... 4393
title of purchaser not warranted ..... n. 3, 4383
when made 4383
Sale of school lands 4345
appraisement by trustee.... 4344
re-appraisement..... 4352
auditor gives quietus 4361
auditor and treasurer conducts..... 4345
ballots used in voting upon 4341
board of county commissioners, orders..4345 and n. 1, 4345
certificate of result of election 4353
purchase 4353
assignment 4356
defective..... 4357
purchase deed upon 4357
effect..... 4353
lost 4360
recording..... 4353
when delivered 4353
deed, how executed 4365
assignment of certificate .. 4357
not executed until full payment..... 4358
recording..... 4363
when issued..... 4353; 4363
election, as to.....4339 to 4344
estopped to claim sale void, n. 1, 4454
fees of auditor and treasurer, 4345
forfeiture and re-sale 4347
effect..... n. 3. 4347
how prevented 4347
how made..... 4345
injunction to preserve timber 4346
legalized.....4364; n. 1, 4367
minimum price 4344
notice of election, for..... 4339

Schools (*cont'd*) SEC.
of sale 4345
order for.....4344; 4345
payment made at any time.. 4359
deferred, when reported.. 4346
indorsement of, where 4362
penalty for failure to make, 4355
where made..... 4361
petition for election..... 4339
recording.....4340; 4366
re-sale, not necessary for, n. 3, 4344
sale without election..... 4366
withdrawing name from, n. 1, 4366
possession after sale..... 4354
private, by auditor, when, 4351 and n. 1, 4351
purchase-money is a loan, when..... 4358
purchaser, possession by.... 4354
injoined, when 4346
rights of, if title fails..... 4367
waste, when liable for 4349
quietus..... 4361
receipt of purchase-money.. 4361
purchase-money in full ... 4362
re-appraisement 4352*b*
redemption .....n. 3, 4346
re-sale, how made 4344
surplus..... 4347
when made 4347
result of election, majority vote..... 4342
rights of purchaser..... 4354
surplus revenue lands, of.... 4368
taxation of lands sold..... 4364
terms..... 4346
timbered lands, conditions as to..... 4346
title, when complete..... 4365
failure, procedure 4367
when vests in state....n. 1, 4344
treasurer's and auditor's duties..... 4345
trustee, duties..... 4344
vote, when necessary 4339
when not necessary 4366
waste, suit for..... 4350
where takes place..... n. 2, 4345
Sale of lands bid in by auditor, 4393, 4394
deed for, to purchaser..... 4395
how made 4394
statement concerning..... 4396
when title vests in state, 4397; n. 1, 4344
Saline fund.
belongs to schools,..... 183, 4325
School commissioners, board of.....4457 to 4464
bonds issue and sell, 4460, 4492*a*, 4526*f*

Schools (*cont'd*) SEC.
official 4457
certificates of members 4459
districts, may change 4458
duties and powers of..... 4460
election of 4457
library, establishes, 4460, 4526*b*, 4526*c*
license to teacher, issuing... 4460
loans, may make..... 4464
meetings of 4462
notes, may give.....n. 2, 5, 4460
oaths of..... 4457
organization of..... 4459
pay, get none 4462
poll-tax, can not levy,...n. 1, 4460
president of..... 4459
receipt to county treasurer..4526*c*
quietus on 4526*d*
record, keeps 4462
rules and regulations, adopt, 4460
school-houses, may build, n. 2, 4460
school laws govern..... 4463
secretary and treasurer of... 4459
superintendent, appoint..... 4460
taxes, levy 4460
how collected for..... 4461
teachers, employ 4460
term of office..... 4459
treasurer of..... 4459
gives bond 4460
vacancies, how filled..... 4459
School corporation..... 4438
name of..... 4437
School corporation, city is.... 4438
process, service on, 4536, n. 3, 3063
town is 4438
School director, election of.... 4498
appeal from..... 4506
appointment by trustee, when 4498
exclusion of pupils by, limited, 4505
fuel and repairs, provide.... 4504
president of school meeting is 4503
removal of, how..... 4498
school-house, has charge of. 4504
trustee, communicates with, 4503
vacancies in..... 4499
visitations by..... 4505
School-house.
See House above.
School lands.
See Lands above.
School laws.
See Laws above.
School section divided by township lines.....4330; n. 7, 188
substitute 4330
See Lands above.
School trustee, township trustee is 4438
accounts and receipts..... 4441
corrected 4456

Schools (*cont'd*) SEC.
examined 4454, 4455
advancing funds, re-imbursement.....n. 11, 4501
annual report 4443
anticipating revenue ....n. 1, 4442
apparatus for schools, furnishing 4444
appeal from..... 4537
assessment of damages.. n. 7, 4441
bond and approval, 4439, 4440, and n. 1, 4440
books, when subject to examination..... 4454
See Books above.
borrowing money, n. 8, 4441; n. 19, 20, 4444
bribery of..... (R. S. 1881, § 2051)
contest.....n. 9, 4439
contracts, interested in, (R. S. 1881, § 2049)
correction of books of....n. 1, 4456
county superintendent elects, 4424
custody of school property, n. 16, 4444
director, appoints, when 4498, and n. 2, 4498
duties.....4441, 4444
as to election 4339
as to revenue 4442
neglect of 4452
educational affairs, has charge of..... 4444
election of.....n. 8, 4438
enumeration, must make.... 4472
See Enumeration.
expenditures, record of, keeps, 4441 to 4443
fine, for failure to serve..... 4453
graded schools, may establish 4444
independent of town trustees, n. 3, 4441
injunction, may bring,..... 4346
joint graded school with city or town..... 4446
lands of congressional township, sees after.....4328, 4444
lands, duties as to.... 4328 to 4368
leases land of township, n. 2, 4329; 4330
levies tax to pay debts 4471
liability to teachers, for pay of, n. 1, 2, 4441; n. 3, 4486; n. 2, 10, 4501
library, has charge of..... 4529
loans, power to bind township for....n. 8, 4441; 4438*a*; 4438*c*
petition concerning..... 4438*b*
mandate to compel delivery of books.....n. 6, 4441
member county board of education..... 4436

Schools (*cont'd*) SEC.

misdemeanor, for neglect of duty..... n. 4, 4442
mistake in settlement...n. 5, 4441
mixing funds.....n. 7, 4438
name of reported to state superintendent..... 4440
neglect of duty, liability 4452
notice of days for business ..4438*c*
notifies teacher of township institute .....n. 1, 4520
numbers schools 4494
office of, lucrative .....n. 7, 4439
officer *de facto*.....n. 4, 4441
pay of 4439; 4464*r*
penalty, liable for .....n. 7, 4441
petition for sale of land, records 4340; 4366
powers over schools....n. 1, 4444
property, has care of 4444
sale of by 4511
record of his proceedings ... 4442
removal.....n. 6, 4439; 4456
reports to county commissioners.....4441 to 4450
contents 4450; 4441
copy sent to county superintendent..... 4441
failure to make..... 4451
files with county superintendent .....4441 to 4450
lands of township, concerning 4328
teachers to make to 4449
transfers 4473
when to make.....n. 2, 4443
revenue for tuition, duties as to..... 4442
former acts legalized.... 4448
schools, establishes 4444
school-house, contracts for, n. 3, 5, 4437
numbers 4494
sells 4511
deed for executes 4511
school township, trustee of is, 4438
special revenue, receives 4441
special tax, levys..... 4467
statement, yearly, must make, 4443
suit against, 4430; 4441; n.6, 4438; n.4, 4437
brings against predecessor n. 6, 4438; n. 4, 4437
tax, annual levy makes..... 4469
special levy to pay debts.. 4471
teachers, employs.....4444; 4501
dismisses on petition.... 4501
himself can not employ as n. 5, 4444
title to township money has, n. 2, 4440
transfers, reports..... 4473
tuition revenue receives 4441

Schools (*cont'd*) SEC.

vacancy in office, how filled, n. 5, 4440; 4440*a*; 4439
voting for himself, can not, when .....n. 18, 4424
vouchers returns with report, 4441
School trustees, board of..... 4439
abolishment of office of, n. 10, 4439
accounts, must keep 4431
board of....4439; 4440; n. 1, 4489
city has..... 4439
duties of..... 4439
election of 4439
contest over .....n. 9, 4439
one of civil town .....n. 3, 3313
tie vote .....n. 8, 4439
time of .....n. 2, 4439
graded schools, establish 4444
independent of council, n. 3, 4441
joint graded schools, establish 4446
liability of for bonds ....n. 6, 4488
lucrative, is not.....n. 2, 90
misapplication of funds, n. 12, 4439
old board may hire teachers for new, n.2, 4445; n.13, 4439; n.8,10, 4501
organization of..... 4439
pay of members, 4439 and n.4, 4439
president of..... 4439
reports to county commissioners 4441
residence of members ..n. 4, 4439
resignation of members .n. 3, 4439
school superintendent employ 4445
secretary of..... 4439
special revenue, manage 4445
settlement not conclusive, n. 3, 188
suit on treasurer's bond, n. 14, 4439
term of office..... 4439
treasurer of..... 4439
vacancies 4439
School, admission to, mandate to compel.....n. 8, 4472
attachment to, when made .. 4472
changing, when allowed 4472
city exempt from control of county superintendent.... 4429
colored children entitled to, n. 1 to 4, 4496
discrimination .....n. 26, 4444
house, see House above.
janitor for .....n. 3, 4504
kindergartens.....4497*a*
lands, see Lands above.
location of..... 4444
manual training...4497*d* to 4497*f*
night.....4497*b* to 4497*c*
number of 4444
regulations for, enforcement, n. 7, 4497
section.....n. 7, 188

Schools (*cont'd*) SEC.

state institutions .....n. 1, 182
terms must be equal ....n. 1, 4494
tuition for, see Tuition below.
uniform, must be .....n. 3, 182
School year begins, when..... 4499
Seal, state superintendent uses, 4420
state board of education has. 4420
Seminary fund belongs to, 183; 4325
Sinking fund, interest distributed..... 4487
Special tax, levy must be made, n. 3, 4490
State board of education formed..... 4420
books select, see Books above.
by-laws, may adopt..... 4421
duties of..... 4421
expenses of..... 4423
members of..... 4420
meetings of.....4420; 4422
orders carried out by county superintendents..... 4429
pay of member of..... 4423
president of..... 4420
record of 4420
seal of..... 4420
secretary of..... 4420
state university, trustees of appoint.....(R. S. 1881, § 4565)
teachers' certificates, grants, 4422
State normal, appropriation to, n. 1, 4482
Statistics, furnished by state superintendent..... 4410
Statute of limitations, when does not run, n. 4, 188; n. 17, 4437
Studies, duty of trustee as to, n. 1, 4497
additional.....n. 2, 4497
algebra .....n. 1, 4497
district meetings determine, 4499
German.....n. 3 to 6, 4497
Latin.....n. 1, 4497
music .....n. 7, 4497
order of.....n. 3, 4497
teacher's contract to teach, n. 4, 4497
what shall be taught 4497
what teacher examined in... 4425

See Branches above.

Subrogation, purchaser under mortgage ....n. 9, 4392
Succession to school property, n. 1, 4437; n. 4, 4438
Suits, auditor may bring, when, 4383
city, against or for..... 4438
complaint, what must show, n. 18, 4437
costs 4535
county superintendent may bring, when..... 4435

Schools (*cont'd*) SEC.

how brought, 4534; n. 3, 7 to 9, 4437; n. 1, 4534
mandate can not take place of .....n. 11, 4437
process, how served, n. 1, 4536; n. 22, 4437; n. 3, 4438
right to bring 4429
statute of limitations, n. 17, 4437; n. 4, 188
town, for or against 4438
township, for or against 4437
Superintendent of city, how elected 4445, 4460
duties 4445
pay 4445
Superintendent of county, see County Superintendent.
Superintendent of public instruction, appeals to..... 4538
apportionment, prints statement of..... 4483
balance of, duty as to 4485
normal school fund, of.... 4556
revenue (of), makes, 4477 to 4482
arrest, privileged from (R. S. 1881, § 2658)
attorney, may employ ..n. 2, 4413
blank forms, furnishes..... 4415
books, duties as to, see Books.
book-keeping, prescribes forms of 4416
clerks of..... 4408
salary of..... 4419
counties, must visit..... 4411
county auditor's books, examines 4411
defaulting, brings suit against 4405
school revenue, reports, 4478 to 4481
penalty for failure..... 4481
county superintendents report to 4428, 4429
names of, reported to 4424
documents, supplies..... 4418
duties 4408
election of..... 4406
expenses paid..... 4412
funds, supervises 4413
deficit in, duties as to..... 4326
diminution of county, when, 4481
normal school, to..... 4556
report to, as to divided township 4336
suit for, may order 4413
general assembly, reports to, 4410
governor, reports to 4409
instructions, superintendent furnishes 4415
interest, looks after..... 4326
lectures..... 4411
libraries, furnishes books to, 4418

Schools (*cont'd*) SEC.
member of state board of education 4420
opinion, gives .....n. 2, 3, 4408
normal school, is trustee of.. 4543
oath of 4407
office provided for..... 4408
president of state board of education..... 4420
prosecutor, superintendent may direct when 4413
reports from.....4409, 4410, 5571
printing and distribution of..... 5573
reports to, 4336, 4346, 4401, 4414, 4424, 4428, 4429, 4440, 4446, 4478 to 4481, 4582
salary of.....4419, 4927
school laws, prints and distributes.....4417, 4464*bb*
school officers, must meet... 4411
opinions, gives to 4408
schools, manages business of, 4408
seal, uses 4420
session laws, gets copy of... 5594
state board of education, member of 4420
state prison libraries, duty as to 6147
state university, reports to.. 4582
is visitor of 4577
statistics, furnishes 4410
suits, causes to be brought 4413, 4405
teachers, must counsel with, 4411
term of office..... 189
commencement of..... 4407
traveling expenses of 4412
visits counties, 4411, and n. 1, 4411
Surplus on sale of land, disposition of 4392
special revenue 4447
Surplus revenue fund, sale of lands of..... 4364
belongs to schools..... 183
investment of 4368
Swamp lands belong to school fund 183, 4325
Taxes, annual levy 4465
assessment..... 4468
auditor's duty as to..... 4468
bonds for school buildings, to pay 4490
buildings, erection of..... 4467
expenses for 4467
tax-payers may advance money for 4467
collection..... 4468
in large city 4461
expense of schools, for 4467
fuel, for..... 4467
legalized in 1872.....n. 1, 4465

Schools (*cont'd*) SEC.
levy, who makes, n. 2, 4467; n. 1, 2, 4469; n. 2, 4490
in large city 4460
limit in large city 4460
special tax 4467
to pay debts, obligatory, n. 3, 4490
library bonds 4526*g*
lien ..... n. 3, 4392
local tuition 4469
manual training school.....4497*f*
management of, by trustee.. 4470
poll, school commissioners can not levy.....n. 1, 4460
race, no discrimination in... 4466
report of auditor concerning, 4478
contents 4479
when made 4479
report of transfers for 468
school commissioners gives receipt for 4526*c*
school lands sold subject to, 4364, 6519
special for buildings and furniture 4467
constitutionality of ...n. 1, 4467
county commissioners no control over.....n. 3, 4467
to pay debts, 4471, and n. 1, 4471
for general purposes in city or town 4490
who levys.....n. 2, 4467
transferred person taxed, 4468; n. 3, 7, 9, 4474; n. 5, 4488
treasurer of county collects, when 4468, 4526*c*
treasurer, quietus to.....4526*d*
trustee, local levy by 4469
tuition 4465, 4469
how applied 4470
uniform, must be..4466; n. 4, 4467
Teacher, authority over pupils, n. 3, 4504
authority out of school..n. 4, 4504
bible, reading .....n. 2, 4493
care of school property, n. 17, 4444
compensation .....n. 1, 4444
when forfeited 4501
contract, blanks in .....n. 3, 4501
contents .....n. 17, 4444
how made ..... n. 6, 4444
lack of funds.....n. 3, 4501
license necessary ....n. 1, 4501
verbal.....n. 3, 4501
when made .....n. 7, 4444
written .....n. 3, 4501
corporal punishment, inflicting..... n. 9, 4501
dismissal .... 4501, and n. 5, 4501
illegal, result .....n. 10, 4501
employment, 4501; 4444; n. 3, 4499

Schools (*cont'd*) SEC.
who makes, n. 19, 4437; n. 7, 4501; 4444
license expiring..... 4426
examined, how.....4425; 4502
failure of authorities to furnish school .....n. 2, 4449
holidays gets ....n. 6, 4501
institute, must attend 4520
pay for .....n. 2, 4520
insulting 4507
liability of trustee to, n. 1, 2, 10, 4501
license, must have, 4501, and n. 1, 4501; 4460
minor may be ..... n. 2, 3, 4501
moral character of..... 4425
names not reported, when.. 4428
old board employing, n. 8, 10, 4501; n. 2. 4445
patrons selecting .....n. 2, 4444
pay, funds giving out....n. 3, 4501
forfeiting 4501
of graded schools....n. 15, 4444
private examination of..... 4427
protest of patrons..... n. 4, 4501
qualifications of 4501
religious belief ..... n. 2, 4493
remedy, to recover pay, n. 2, 4486
report, must make, 4449, and n. 4, 4449
contents 4449
penalty 4449
private teacher.....n. 1, 2, 4509
when makes.....n. 1, 4449
resignation of.....n. 8, 4444
state certificate to 4422
term of employment....n. 8, 4501
trustee can not employ himself.....n. 5, 4444
not personally liable ..n. 3, 4486
want of funds to pay, no defense ..... n. 2, 4486
who may employ ..... n. 8, 4501
witholding wages ..... n. 3, 4449
Terms, length of school 4495
uniform, must be, 4494, and n. 1, 4494
Text-books, change of..... 4436
See Books.
Timber, sale of lands with 4346
cutting 4346
Time, how reckoned..... 4495
month..... 4495
term 4445
week..... 4495
year 4495
Title, how taken to school property 4508
joint school..... 4513
state does not warrant, on sale of.....n. 3, 4783
to school money.....n. 2, 4440

Schools (*cont'd*) SEC.
when vests in state without deed 4396
Towns, corporation for school are ..... 4438, and n. 2, 4438
bonds for buildings, may sell, 4488
county superintendent controls ..... n. 3, 4429
dog fund, division of, with, n. 3, 4487*b*
See Taxation.
joint graded schools, in 4446
pupils outside may attend .. 4490
school corporation, is.....4438
superintendent in 4445
suits ..... 4438, n. 15, 4439
trustees fined, when..... 4451
election of 4439
unincorporated, bequest to aid..... 4514
bonds for 4514
petition for .....4514 to 4516
unincorporated, sale of bonds, 4516
Townships, boundaries of 4331
contracts of..... 4437
corporation for school purposes..... n.. 2, 4437, n. 9, 4438
county line, dividing..... 4332
division of funds, with town, n. 10, 4441
judicial notice, of..... n. 10, 4437
name of.....4437; n. 20, 21, 4437
power of.....n. 16, 4437
presumption raised by use of name.....n. 6, 4437
process, how served upon, n. 22, 4437
suits.....4437; 4438
Traffic in questions forbidden..4421*a*
Transfers, adjoining, when must be made..... n. 2, 4473; n. 2, 4474
appeal from..... 4537; n. 1, 4473
auditor's duty.....n. 5, 4473
better accommodation, n. 3, 4473
constitutionality of law, n. 4, 4474
county superintendent, duty concerning.....n. 5, 4473
enumeration of, n. 6, 4472; 4472; 4473
from one county to another, 4474
notice of .....n. 5, 4473
payment for transfer.....4474
record of.....n. 6, 4473
renewals..... n. 10, 4473
re-transfer..... n. 4, 4473
right of..... n. 1, 4473
taxing transferred persons, n. 7, 4473; n. 3, 4474; 4490, and n. 1, 4490
tenant's property can not be taxed.....n. 9, 4473
wife's property can not be taxed..... n. 9, 4473

Schools (*cont'd*) SEC.
when made.....n. 1, 4473
who may be..... 4473
Treasurer (city), bond in large city..... 4460
election and bond..... 4439
Treasurer (county) collects school-tax..... 4468
pays tax to city treasurer.... 4461
report, makes, of funds of... 4398
resale of land..... 4347
sale of land, attends..... 4345
school moneys, receives, n. 2, 4388
Treasurer of state, pays funds to county..... 4484
Treasurer (town), election and bond..... 4439
Truancy, expulsion for....n. 2, 4505
Tuition, advancement by trustee, re-imbursing.....n. 12, 4501
annual levy of..... 4465
anticipating.....4442; n. 1, 4470
application of.....n. 2, 4442
apportionment by auditor of state.....4484*a*
according to enumeration, 4432
by county superintendent, 4434
auditor of state draws warrant for.....4484*a*
books, used to pay for 4464*q*
defined 4325
diminished for failure to report..... 4431
division of, when made, n. 11, 4438; n. 2, 4508
expenditure of, within year, 4442, 4499
expense of collecting can not be deducted from 4325
fees can not be taken from.. 4325
formation of town, division of, n. 2, 4508
levy of, who makes ..n. 1, 2, 4469
license money forms a part of, 4325
local tax for..... 4469
how levied..... 4470
payment of, by non-resident, n. 4, 4490
private school, can not be used for.....n. 4, 4509
rents deducted from 4328
report of transfers for..... 4473
town incorporated within township.....n. 5, 4486
See Tax.
Uniformity of school terms.... 4494
Unsafe investments .....n. 1, 4400
Use of school-house for private purposes.....4509; 4510
Vacancy in office of county superintendent..... 4424
city or town trustee ...4439; 4459
township trustee.....n. 5, 4440

Schools (*cont'd*) SEC.
Vaccination, duty concerning, n. 4, 4429; cl. 35, n. 2, 3106
power to compel.....n. 5, 4429
Visits, county superintendent makes 4429
director makes 4505
state superintendent makes . 4411
Voters defined, n. 4, 4501; n. 2, 4509; 4499
lessees .....n. 1, 4329; n. 1, 4339
meetings of 4499
petition for removal of schoolhouse..... 4499
petition to sell house 4499
repairs directs.....4499; 4500
who are.....n. 1, 4498
Warrant on treasurer to borrower..... 4383
to counties by state auditor.. 4484
Warranty of title by state..n. 3, 4383
Waste, injunction to prevent on school lands .....n. 2. 4346
liability for in case of forfeiture..... 4349
suit for 4350
Week, school, what is..... 4495
Wife, signature to mortgage necessary .....n. 3, 4385
Witnesses, use of on appeal, n. 1, 4537
Women eligible to school offices 4540
bond of binding 4541
constitutionality of act, n. 1, 2, 4540
Worship, reading bible....n. 3, 4493
Year, school, when begins 4499

Scientific institution
Exempt from taxation....cl. 5, 6276

Scuttles
Fire regulations concerning .. 3199

Sea walls
City may compel building of, cl. 34, 3106

Seal
City has 3068
clerk may use ....3068; n. 4, 3062
mandamus to obtain possession of .....n. 2, 3102
mayor keeps 3062
when uses .....n. 1, 4, 3062
replevin for .....n. 2, 3106
use of.....n. 2, 3102
State has 227
Town has.....cl. 1, 3333

Sealer of weights and measures
Council elects 3098

Seamen
Exempt from highway work, n. 1, 3156*a*
Right to vote 85

Second-hand clothing SEC.
Sale of regulated ...cl. 24, n. 1, 3106

Secretary of state
Attests governor's signature .. 228
Member of board of state tax commissioners 6401*a*

Seminary fund
Schools get 183

Services
No man's particular services shall be demanded..... 66

Sewer (generally)
Collateral attack upon proceedings can not be made, cl. 43, n. 14, 3106
Compensation not necessary, n. 12, 66
Construction optional, cl. 43, n. 17, 3106
under general power, n, 13, 3106; cl. 40, 43, 3106; 3074; 3151
Costs, how assessed under act of 1889 .....3292*c*
Damages.....cl. 43, n. 12, 3106
Eminent domain, power of used to obtain .....cl. 43, n. 5, 3106
Extension beyond city limits, cl. 43, n. 2, 3106
Nuisance, when is, cl. 43, n. 17, 3106
Optional with city to build, cl. 43, n. 11, 3106
Outlet, n. 10, 3106; cl. 43, n. 8, 18, 3106
Plan changed .....cl. 43, n. 6, 3106
defective .....cl. 43, n. 17, 3106
Power to construct a continuing one .....cl. 43, n. 1, 3106
Private drains.....cl. 43, n. 1, 3106
Public, what is.....cl. 43, n. 20, 3106
Sewerage accumulated near house..... .....n. 33, 3161
Skill in constructing .....n. 5, 3106
Surface water, sewers for, cl. 43, n. 13, 3106; n. 2, 3151
Tapping.....cl. 43, n. 9, 3106

Sewer (city)
Appeal from proceedings, cl. 43, n. 3, 3106
Apportionment of cost, cl. 43, n. 19, 15, 3106
Bid for .....cl. 43, 3106
Clerk's certificate .....cl. 43, 3106
Construction, cl. 49, 3106; cl. 43, 3106; 3074; 3151
Contract to build....cl. 43, n. 4, 3106
Contractor's bond .....cl. 43, 3106
Cost, how paid ....cl. 43, 3106; 3151
District in large city..... 3061
Journal entry, concerning, cl. 43, 3106

Sewer (city) (*cont'd*) SEC.
Lessee assessed for cost, cl. 43, n. 19, 3106
Notice to lot-owner .....cl. 43, 3106
Ordinance for.....cl. 43, 3106
not necessary.....cl. 43, n. 2, 3106
publication.....cl. 43, n. 16, 3106
Outlet, cl. 43, n. 8, 18, 3106; n. 10, 3106
Power of city to build, cl. 43, n. 2, 3106
Precept to collect assessment, cl. 43, n. 3, 3106
Regulating.....cl. 40, 3106; 3151
Repairing.....cl. 43, n. 7, 17, 3106
Street commissioner superintends construction of 3074
Wharf may be assessed for, cl. 43, n. 19, 3106

Sewer (city and town)
May be constructed under act of 1889 .....3292*a*
costs.....3292*c*

Sewer (town)
Appointment of appraisers.... 3393
majority may act..... 3395
report 3393
Apportionment of cost 3393
Assessment, form 3397
treasurer's notice of 3398
Collateral attack can not be made upon proceedings, n. 2, 3396
Complaint 3400
Construction, 3390; 3393; 3396; cl. 9, 3333
act liberally construed..... 3406
Contract for 3404
Cost apportioned 3397
collection 3398
how collected 3400
penalty for non-payment ... 3399
town may pay part 3403
Engineer for..... 3402
Fees of officers..... 3401
Lien, assessment is..... 3393
Order to appraisers 3394
Outlet ..n. 10, 3106; cl, 43, n. 8, 3106
Penalty for failure to pay costs, 3399
Power over sewers 3392; 3406
Proceedings to establish 3393
Protection 3405
Schedule 3396
Superintendent 3402
Tapping..... 3405
Terms of letting contract 3404

Sewerage
Accumulation near residence, n. 3, 3161
Nuisance .....n. 3, 3161

Shade-trees (city and town) SEC.
City may regulate ...cl. 15, 46, 3106
Cutting an offense, 3229*b*; 3229*a*; cl. 46, n. 1, 3106
indictment for 3229*b*
Mutilating .....n. 3, 3155
Ordinance concerning..... 3229
Planting..... 3229
Protecting 3229
Removing .....cl. 46, n. 2, 3106

Shade-trees (town)
Enclosing street for 3334
Protection of 3229
Town may plant and regulate, cl. 14, 3333, 3229
Use of margin of street for.... 3334

Shooting gallery
City's liability for ...cl. 3, n. 1, 3106

Shows
License for .....cl. 15, 3106

Sidewalks
Construction in city....3161 to 3165
Control in city..... 3161
Highways are .....n. 5, 3161
Holes in not obstructions, cl. 5, 3106
Ice and snow upon, n. 3, 3155; cl. 18, n. 9, 3106
Improvement in city 3161, 3292*a*
Incumbering .....cl. 18, 3106
Obstruction of in city....cl. 18, 3106
Repairing 3106
Shade-trees on border 3229
Slippery, abutting owner not liable for ice upon, n. 40, 3161; n. 3, 3155
Snow, abutting owner clearing off.....n. 3, 3155; n. 40, 3161
See Negligence; Obstructions; Street Improvement.

Sidewalks in town
Action to enforce lien for construction 3360
Contract for improvement.... 3359
Cost 3360
Driving upon unlawful 3361
fine 3362
Improvement, 3357; cl. 9, 3333; 3392*a*
under general law n. 19, 35, 3162, 3292*a*
Levy of taxes for 3363
Lien for improvement 3360
Marshal constructs, when..... 3359
Obstructing .....cl. 11, 6, 3333
Ordinances for..... 3358
Petition for..... 3363
Power over 3328
Riding upon prohibited..cl. 11, 3333
Shade-trees upon..... 3229
See Negligence; Obstructions; Street Improvement.

Sinking fund SEC.
Aid bonds for railroad..... 3152
City or town of 16,000 voters may provide 3231
City having $30,000 of debts may provide 3126
General tax in city for..... 3158
Levy for..... 3158
Tax.....3126, 3152, 3158, 3251
Temporary investment of funds, 3158*a*

Sinking fund commissioners
Commissioners elected, 3126*b*, 3126*a*
bond 3126*b*
term 3126*b*
Coupons receivable for taxes, 3231*a*
Deposit of funds.....3126*c*
Funds, how used 3126*e*
Interest on deposit 3126*c*
Misapplication of funds.....3126*e*
Pay of commissioners.....3123*f*
Removal 3126*g*
Report of.....3126*d*
publication 3126*d*
Treasurer's report 3126*c*
duty 3126*c*
Vacancy in office.....3126*h*

Skids
Obstructing street ..cl. 18, n. 6, 3106

Slaughter-houses
City may locate .....cl. 11, 3106
Town may locate.....cl. 8, 3333

Slips
Use of, city may regulate 3142

Slops
Removal.....3226; cl. 18, n. 3, 3106

Smoke
Damages, may increase ....n, 23, 66

Snow
Falling from roof...cl. 18, n. 9, 3106
Removal from sidewalk, n. 40, 3161; n. 3, 3155

Soap factory
Regulation of.....cl. 4, 3106

Soldier
Voting 85
Working highway.....n. 1, 3155

Squares
Dedicating.....cl. 45, n. 4, 3106
Incumbering.....cl. 18, 3106
Petition to sell .....cl. 47, 3106
Sale ..... cl, 47, 3106
See Public Squares.

Stairway
City not liable to person falling down.....n. 38, 3161
Obstructing street ..cl. 18, n. 6, 3106

State SEC.
Can not assume debt of city... 198
Property, may seize 66

State-house square
Can not be sold 231

Statute of limitations
Condemnation proceedings, when a bar.....n. 19, 60
Pleading before mayor....n, 5, 3066

Stay
Judgment of conviction may be, 3067

Steam-whistle
Preventing use of....cl. 7, n. 1, 3106

Stock
City may tax...3156, and n. 10, 3156
Subscribed for by city or town, n. 1, 198

Stones
Incumbering street, cl. 18, n. 2, 3106

Stove-pipes
Town may regulate .....cl. 3, 3333

Stranger
Bound by city or town ordinances.....n. 15, 3066

Straw
Storage may be regulated, n. 1, 3199; n. 1, 3155

Streams
City may straighten 3166; 3103
Channel changed, damages must be assessed .....n. 2, 3170
Controlled by city..... 3103
by town 3338
Throwing on land.....n. 7, 3106
Town may control 3338
Vacated in city 3184

Street commissioner
Bond of..... 3043
Debt, can not contract..... 3074
Duties..... 3074
Election 3043; 3098
in large cities 3054
in towns.....cl. 10, 3333
Marshal performs duties of, when 3043
Notice to of defect in street, n. 2, 3074
Number in town .....cl. 10, 3333
Oath and bond 3095
Powers of, road supervisor has, 3161
Prisoners, works on street 3067
Purchases tools 3074
Re-appointment.....n. 8, 3043
Removal ....n. 6, 8, 3043; n. 1, 3074
Repairs, makes..... 3162
Report 3074
on drainage in city.....cl. 2, 3106
Supervisor acts as .....n. 2, 3098

Street commissioner (*cont'd*) SEC.
Term.....n. 8, 3043
in large city 3054
Torts, city liable for.....n. 2, 3074
Vacation of street 3184

Streets
Abandonment.....n. 15, 3161
Abutting owner's rights in, n. 6, 3161
Adverse possession, cl. 18, n. 8, 3106; n. 15, 3161
Care and supervision, cl. 18, n. 8, 3106
Civil engineer, duty toward opening 3073
Cleaning .....cl. 10, 3106
Cul-de-sac is part of .....n. 11, 66
Electric light poles in 3229*c*
Eminent domain to acquire, n. 1, 11, 66
Estimate of cost, when compelled by mandate....n. 8, 3073
Exemption from improvements, cl. 49, 3106
Fee, pay for.....n. 11, 66
Gas-pipes laid in, cl. 28, n. 6, 7, 8, 3106; 3110*a*
Grade, change of, effect on water-pipes ....cl. 26, n. 7, 3106
may be .....n. 1, 2, 3, 3073
Highways are .....n. 5, 3161
county highway becomes, cl. 18, n. 8, 3106
Huckster stands in .....n. 9, 3161
Incumbering .....cl. 18, 3106
Lighting in city .....cl. 28, 3106
in town..... 3336
Market-house in, n. 14, 66; cl. 33, n. 1, 3106
Narrowing, damages must be assessed for.....n. 39, 3161
Negligence, see Negligence.
Obstructions to, what is, cl. 18, n. 9, 3106
removal of..... 3191
by town 3367
Overhanging objects ....n. 10, 3161
Park in way of.....cl. 45, n. 4, 3106
Plan of improvement, change in .....n. 7, 3073
Power of city over, strictly construed .....n. 4, 3161
Prisoners working upon ..n. 2, 3067
in town..... 3347
Private use of .....n. 9, 3161
Private corporation, taking land from for.....n. 13, 3161
Purpose .....n. 11, 66
Railroad in, cl. 18, n. 9, 3106; n. 7, 3161
street railway in..... 4154
Repairing..... ....n. 18, 3161
Road tax 3161

Streets (*cont'd*) SEC.
Shade-trees in.....cl. 46, n. 2, 3106
in town..... 3334
Supervisors of, city may elect, 3098
Title, must be obtained before improvement.....n. 10, 3161
Traction engine, using street..3224*d*
Use of, what legitimate, n. 12 to 18, 66
for ferry..... 3103
Water-pipes laid in cl. 28, n. 6, 7, 8, 3106, 3110*b*
Working in city.....3161; 3156*a*
in town .....3367 and n. 6, 3367
Vacation, laws concerning must be general..... 118

Street improvement (city)
Acceptance of work, evidence and effect.....n. 16, 3164
Advertisement for bids ..n. 13, 3162
form..... 3162
must be in English ....n. 29, 3162
Affidavit for precept..... 3165
defective, and effect....n. 17, 3165
Appeal bond..... 3165
costs upon .....n. 33, 3165
effect on reversal .....n. 27, 3165
practice upon, n. 23, 24, 25, 30, 31, 3165
transcript..... 3165
when to take .....n. 34, 3165
Assessment..... 3162
affidavit of, sufficiency ..n. 5, 3165
complaint to collect 3165*a*
constitutionality of law authorizing..n. 1, 3165; n. 6, 3164
contractor must satisfy record, 3229*i*
correcting .....n. 3, 3164
defenses to.....n. 22, 3164
description of property, n. 10, 3164
each lot must be separately assessed .....n. 8, 3164
final, what is .....n. 5, 3164
invalid in part, effect...n. 23, 3164
as to other property..n. 9, 3164
joint owners.....n. 8, 3164
lien, when attaches....n. 11, 3164
mandate to compel.....n. 7, 3164
necessary to issue a precept, n. 19, 3164
new, may be.....n. 19, 3164
new, second affidavit required, n. 5, 3165
precept can not be issued without.....n. 19, 3164
without is void .....n. 7, 3165
personal liability upon..n. 3, 3165
presumption concerning.n. 5, 3164
repeal of statute.....n. 2, 3165
right to collect can not be destroyed .....n. 4, 3165

Street improvement (city) (*cont'd*) SEC.
sufficiency.....n. 27, 3162
unplatted lands, how collected, n. 1, 5, 3165*a*
Bid, acceptance 3162
agreement not to compete, void .....n. 34, 3162
bidder can not claim damages, n. 33, 3162
bond accompanying....n. 30, 3162
lowest, not accepting...n. 31, 3162
modifying.....n. 33, 3162
rejecting .....n. 21, 3162
releasing bidder .....n. 31, 3162
Cemetery can not be assessed with cost of .....n. 17, 3162
Certificate of sale..... 3165
assignment of..... 3165
Church can be assessed ..n. 17, 3162
Civil engineer has charge of .. 3073
Collateral attack upon proceedings can not be made, n. 20, 3162; n. 37, 3165
Complaint to collect assessment 3165*a*
Consequential damages...n. 7, 3162
Constitutionality of statute, n. 1, 3161; n. 6, 3162; n. 2, 3163; n. 3, 3165*a*
Construction of statute...n. 4, 3165*a*
Contract for improvement 3163
assignment.....n. 24, 3162
bond taken with..n. 35, 3165; 3162
city not liable upon...n. 3, 4, 3162
city orders, paid in ....n. 21, 3162
irregularities, city not liable for.....n. 28, 3165
form 3162
officer interested in..... 3163
sufficiency of .....n. 21, 3162
writing, must be in.....n. 2, 3162
Costs, apportionment of 3163
lien 3164
paid by city in advance..n, 38, 3165
Court-house can not be assessed, n. 17, 3164; n. 17, 3162
Coverture no defense ....n. 14, 3164
Crossings paid for by city, n. 15, 3162
Deed..... 3165
recitals in, effect.....n. 16, 3165
Defenses.....n. 25, 3165
Description of lots .....n. 27, 3162
Dirt, ownership of....n. 22, 35, 3162
Estimate of cost, form.....3073*a*
assignment.....n. 18, 3164
authorized former improvements 3163
clerk's copy of 3164
collection..... 3165
how made 3163
incorrectness must be shown by answer.....n. 31, 3165

Street improvement (city) (*cont'd*) SEC.

partial.....3164; n. 6, 3165
resolution allowing..... 3164
Estoppel of land-owner, n. 8, 3165; n. 13, 21, 3164
Femes covert, may redeem.... 3165
Grade changed. ....n. 2, 3162; 3073
damages must be assessed, n. 1, 3170
Idiots may redeem..... 3165
Infants may redeem 3165
Injunction against..... 3165
Insane persons may redeem... 3165
Irregularities not sufficient to defeat.....n. 18, 25, 3165
when fatal .....n. 20, 3164
Jail-yard can not be assessed, n. 17, 3164
Joint contractor, affidavit for precept.....n. 12, 3165
Judicial notice of city's powers to improve street .....n. 6, 3162
Length of improvement..n. 3, 3162
Liability of city..... 3163
Lien.....3162; 3164
priority over judgment or mortgage.....n. 39, 3165
repairs 3164
what property subject to, n. 40, 3165
when attaches.....n. 11, 3164
Lighting, cost of.....cl. 18, 3106
Literal compliance with statute not necessary.....n. 9, 3165
Mandate lies to compel assessment.....n. 10, 3165
Notice to owner essential, n. 6, 3162
Nul tiel record not a good plea in defense.....n. 29, 3165
Optional with city to order, n. 10, 3162
Patented process may be used, n. 12, 32, 3162
Payments made in advance by owner.....n. 4, 3164
how enforced 3165
made in advance by city, n. 38, 3165
voluntary, can not be recovered back .....n. 15, 3164
Petition for improvement..... 3162
may be made without..... 3164
agreement to sign void..n. 1, 3162
changing.....n. 28, 3162
form 3162
for passage of ordinance.... 3162
remonstrance 3162
repairs, not necessary, for... 3164
sufficiency, council holding, effect .....n. 2, 3164
insufficient, work void, n. 8, 3162
two-thirds vote when petition is sufficient.....n. 2, 3164

Street improvement (city) (*cont'd*) SEC.

when not necessary 3164
who may sign .....n. 28, 3162
withdrawing names from, n. 28, 3162
Plans for as evidence ....n. 11, 3165
use of.....n. 9, 3162
Precept, affidavit for, form 3165
appeal from.....n. 22, 3165
estimate necessary, n. 19, 3164; n. 7, 3165
deed upon 3165
description of property in, n. 20, 3165
exemption from sale on, cl. 49, 3106
issuance compelled by mandate .....n. 10, 3165
new precept may be issued, when .....n. 19, 3164
notice of issuance 3165
order for .....n. 17, 3165
sale under 3165
sale, certificate of..... 3165
signed by mayor.....n. 21, 3165
void, may be enjoined..n. 22, 3165
Presumptions, concerning, n. 37, 3165
Property liable for cost of, 3163, 3165*a*
Public square, assessment, n. 17, 3164
Quieting title, questions triable, n. 36, 3165
Quorum of council must be shown on appeal ....n. 14, 3162
Railroad can not be assessed, n. 16, 3162
street railway can not be assessed.....n. 16, 3162
Re-improvement .....n. 11, 3162
Remonstrance, form 3162
Repairing.....n. 6, 35, 3162
Resolution for..... 3162
signing by mayor, not necessary.....n. 5, 3162
sufficiency.....n. 9, 3162
Road-tax for repairs 3161
Sale, notice for.....n. 13, 3165
refunding money paid, n. 14, 15, 3165
two or more lots at one time, void .....n. 19, 3165
Sidewalks, repairing, 3162 and n. 35, 3162
general laws applicable to, n. 19, 3162
State's property liable for cost, 3162
Statute strictly construed, n. 6, 20, 3162
Sunday notice for bids ...n. 13, 3162
Taxing power, power to assess different from .....n. 25, 3162
Title to land sold .....n. 14, 3165
Transcript.....n. 23, 24, 3165

Street improvement (city) (*cont'd*) SEC.

Two-thirds vote, when necessary ..... n. 8, 3162
Unplatted lands, how assessed, n. 6, 3165*a*
complaint to collect assessment on 3165*a*
what is ..... n. 7, 3165*a*

Street improvement (city and town, Act of 1889)

Acceptance of land-owner's agreement 3292*g*
Action to recover cost of 3292*a*
Agreement to pay assessments, 3292*g*
acceptance by city 3292*g*
effect 3292*g*
Allowance to owner of land for improvement made 3292*d*
Appeal from assessment 3292*j*
questions tried 3292*j*
trial 3292*j*
Assessment 3292*g*; 3292*c*
collection 3292*g*
form 3292*f*
how made 3292*f*
notice of 3292*g*
objection to 3292*g*
placed on tax duplicate 3292*g*
Attorney fees ... 3292*a*; 3292*c*; 3292*i*
Bids 3292*a*
advertisement for 3292*a*
re-advertisement 3292*d*
rejection 3292*d*
reletting 3292*d*
Bonds, application of assessment to payment 3292*c*
coupon 3292*h*
form 3292*h*
interest 3292*h*
kind 3292*h*
liens 3292*h*
ordinance 3292*g*
pro rata payment 3292*c*
when city performs work 3292*d*
when issued 3292*g*
Certificate of assessment issued, 3292*i*; 3292*g*
action by several upon 3292*i*
attorney fees recoverable upon 3292*i*
form 3292*i*
interest 3292*i*
lien 3292*i*
pro rata payment 3292*c*
Collection of assessment 3292*g*
how made 3292*j*
Constitutionality of statute, n. 1, 3292*b*
Construction, city may perform 3292*d*
Contract to perform work 3292*d*

Street improvement (city and town, Act of 1889) (*cont'd*) SEC.

bond for performance 3292*d*
officer interested in 3292*d*
Costs, allowance to lot-owner, 3292*d*
debt, is not city's ..... n. 2, 3292*g*
how collected 3292*c*
paid out of general fund 3292*e*
sewer 3292*c*
unplatted land, how assessed, 3292*c*
Credit given for payments made 3292*g*
Crossings, city pays for 3292*c*; n. 2, 3292*g*
Debt, is not debt of city .. n. 2, 3292*g*
Declaratory resolution 3292*b*
Estimates 3292*e*
final 3292*f*
form 3292*f*
how made 3292*f*
liens 3292*e*
partial, when made 3292*e*
prepayment, credit 3292*e*
reference to committee 3292*g*
report of committee 3292*g*
resolution allowing 3292*g*
rule for making 3292*c*
Fees of treasurer on sale 3292*j*
Foreclosure of lien 3292*a*; 3292*c*
Injunction, when allowed, 3292*j*; 3292*h*
Installments 3292*g*
Interest is a lien 3292*g*
assessments bear 3292*g*
Large cities not governed by this act 3292*k*
Liens 3292*g*
attorney fee is 3292*c*
contractor has 3292*c*
costs are 3292*a*
discharge of 3292*g*
estimate is 3292*e*
extent of 3292*g*
foreclosure of 3292*c*; 3292*i*
mistake does not vitiate 3292*c*
superiority 3292*c*; 3292*e*
when attaches ..... n. 1, 3292*e*
Mistake does not vitiate 3292*c*
Necessity for a question for city ..... n. 3, 3292*a*
Notice essential ..... n. 4, 3292*b*
filing assessment 3292*g*
report 3292*g*
how long must be published, n. 5, 3292*b*
reference to committee 3292*g*
what is sufficient ..... n. 1, 3292*g*
Officer interested in contract, effect 3292*d*
Ordinance for alley 3292*b*
asphalt 3292*b*
effect ..... n. 3, 3292*b*

Street improvement (city and town, Act of 1889) *(cont'd)* SEC.

gutter 3292*b*
notice of passage 3292*b*
sidewalk and street 3292*b*
street 3292*b*
Petition 3292*a*
when not necessary .. 3292*a*; 3292*e*
Precept, when issued 3292*j*
notice of 3292*j*
Recision of order for improvement ..... n. 3, 3292*b*
Redemption from sale 3292*a*
Re-imbursement of city 3292*e*
Remonstrance 3292*g*
against assessment 3292*g*
Repairs 3292*e*; 3292*a*
estimate of 3292*e*
Report of committee on assessment 3292*g*
Sale of lot 3292*a*; 3292*c*
certificate of as evidence, 3292*i*; 3292*j*
costs occasioned 3292*c*
how made 3292*j*
notice of 3292*j*
precept 3292*j*
proceeds distributed 3292*j*
redemption from 3292*j*
State's property, how improved, 3292*a*
Statute strictly construed, n. 2, 3292*b*
Street commissioner may make, 3292*d*
Tax duplicate, form 3292*i*
Unplatted lands, how assessed, 3292*c*
Waiver of errors ..... n. 3, 3292*g*

Street improvement (town)

Alleys, may improve ..... cl. 9, 3333
Bids, advertisements for 3359
bond upon 3359
sufficiency ..... n. 5, 3364
Board of commissioners order, 3380
Complaint, necessary averments ..... n. 4, 5, 3366
demurrer, tested by ..... n. 1, 3366
exhibits ..... n. 3, 3366
form 3366
sidewalk 3360
Contract, how let 3364
officer can not take ..... n. 5, 3366
presumption as to parol, n. 4, 3364
Control of town exclusive, n. 3, 3328
Cost apportioned 3365
credit for improvement 3363
how collected 3366
working out 3363
Crossings ..... cl. 9, 3333
Estimate 3366
Grade, what sufficient .... n. 1, 3358
ordinance for 3358

Street improvement (town) *(cont'd)* SEC.

Improvement in town .... cl. 9, 3333
Liens 3360; 3366
Necessity for, question for town ..... n. 2, 3357
Ordinance for 3358; 3364
for sidewalk 3358
Petitions for .. 3363; n. 3, 3364; 3368
Power of board over ..... n. 2, 3366
Public square ..... n. 7, 3364
Repairing ..... 3367; n. 5, 3357
authority to make ..... n. 2, 3363
must make ..... n. 2, 3328
Sidewalk ..... n. 4, 3357; 3360
improvement ..... cl. 9, 3333
Tax to pay for 3363
Widening street, can not when ordering improvement, n. 8, 3364

Street opening (city)

Appeal allowed 3180
answer upon ..... n. 2, 3180
bond 3180
costs 3180
demurrer ..... n. 7, 3180
judgment upon 3180
notice of to city attorney ... 3180
procedure 3180
title of case ..... n. 1, 3180
transcript 3180
trial 3180
verdict ..... n. 8, 3180
waiver ..... n. 3, 3176
Appropriation must be for public use ..... n. 7, 8, 9, 3167
Assessment 3170; 3177
delivered to city treasurer .. 3175
when valid only in part, 3168; 3173
Benefits 3177; 3170
collection 3177
collection delayed 3176
Civil engineer superintends opening 3073
Claim for damages 3169
Clerk notifies commissioners of election 3166
files report and keeps 3175
of proceedings 3168
report, delivers to treasurer, 3174; 3175
transcript makes 3180
Commissioners, appointment .. 3167
certificate of 3166
interested ..... 3166; n. 1, 2, 3167
meeting 3168
oath 3166
pro tempore 3166
Complaint on appeal 3180
Corporation, notice to 3179
Costs on appeal 3180

Street opening (city) (*cont'd*) SEC.

Damages, acceptance, effect upon land-owner .....n. 3, 3176
grade changed, damages must assess.....n. 1, 3170
how assessed .....n. 3, 3170
lessee.....n. 4, 3176
measure .....n. 4 to 11, 3170
payment, n. 1, 3176; n. 1, 3181; 3182
presumption as to .....n. 1, 3181
several persons claiming.... 3182
tenant, when gets .....n. 7, 3170
tender of.....n. 1, 3176
unknown land-owners, 3182; 3183
waiver.....n. 1, 3182
when city liable for.....n. 3, 3174
who entitled to.....n. 2 to 4, 3168
Description of property, n. 3, 4, 3168
Dismissal of proceedings..n. 8, 3180
Estoppel to deny title acquired, n. 2, 3176
Grade changed, damages must be assessed.....n. 1, 3170
Guardian, appointment..... 3173
Hearing by commissioners.... 3169
Infant without guardian 3173
notice to guardian..... 3173
Insane person..... 3173
Judgment, effect upon, n. 2, 3168; 3181
Lessee entitled to damages, n. 4, 3176
Lien, effect upon .....n. 2, 3168
assessment is..... 3175
Majority of commissioners may act..... 3169
Marshal serves notices of 3168
Mortgage, effect upon ....n. 2, 3168
Notice to commissioners, 3168; 3167
appearance a waiver....n. 1, 3168
assessment..... 3177
clerk's to land-owner 3173
to corporations..... 3179
to land-owner, 3168, and n. 1, 3168
to non-residents..... 3177
want of, effect..... 3168
Oath of commissioners ..3166; 3169
Parties to proceedings, n. 2, 3, 4, 3168
Payment of damages, 3176; 3182; 3183
Precept not required 3177
Proposition referred to committee 3167
Proof of notice..... 3168
Protest of land-owner 3168
Railroad may not take for, n. 11, 3167
entitled to damages....n. 11, 3170
Real estate benefited 3172
Re-assessment 3173
notice to applicant..... 3173

Street opening (city) (*cont'd*) SEC.

Reference of petition to committee 3167
Report of committee..... 3168
acceptance 3174
contents 3171; 3172
copy delivered to city treasurer 3174; 3175
damages, must be certain, n. 1, 3171
filed in recorder's office 3175
form 3171
recommendations of council, 3174
referred back, form 3174
clerk's notice concerning. 3174
on expediency 3167
showing land to be taken ... 3168
when council must act upon, n. 2, 3174
Resolution of appropriation .. 3174
expediency 3167
reference to committee 3167
sufficiency .....n. 1, 14, 3174
Slope for fill may be appropriated.....n. 7, 3167
Subpœna for witnesses 3169
clerk issues 3168
marshal serves 3168
Subsequent purchaser, rights.. 3175
Substantial compliance with statute .....n. 3, 3161
Tender of damages 3183
Treasurer's record..... 3177
damages, pays..... 3182
notice to city attorney 3182
to non-residents 3183
to unknown owners 3183
reports collections ...3177, 3178
Transcript on appeal 3180
Trial, practice.....n. 3 to 8, 3180
Turnpike can not be appropriated.....n. 5, 3168
Unknown owner 3168, 3183
Vote, what is necessary to make 3167
Waiver of claim to damages, n. 3, 3176
Widening street.....n. 5, 3167

Street opening (town)

Acceptance of report.....3371, 3372
when must be made.....n. 2, 3372
Alley opened or vacated..... 3367
Appeal 3372
bond 3372
effect 3372
Appropriation for 3371
Assessment list, collection 3371
Clerk notifies commissioners, 3368
Commissioners appointed 3368
duty..... 3369
notice to 3368

Street opening (town) (*cont'd*)

SEC.

oath 3368
report 3369
Complaint to collect benefits.. 3371
Damages assessed 3369
tender 3370
Infants 3373
Insane persons 3373
Improvement of street a separate proceeding .....n. 8, 3364
Lien of assessment 3371
Notice to land-owner .....n. 3, 3368
Petitions, forms 3368
Power of town over streets, 3367, and n. 3, 3367
Procedure 3368
Report of commissioners 3369
acceptance 3370
Tender of damages 3370
Transcript on appeal 3372
Trustees may open or vacate.. 3367
Survey 3367

Streets, vacation (city)

Adjoining land-owner outside town limits can not object, n. 1, 3187
Agreement to change lines of street 3190
journal entry upon 3190
Alley 3184
Bond given on filing petition, 3184
Change of street 3190
Damages, increased pending proceedings 3194
assessed by commissioners .. 3185
Easement extinguished, land reverts to owner.....n. 1, 3184
Expenses paid by petitioners.. 3184
Grading and improving 3194
Improved by land-owner pending proceedings 3194
Injunction to prevent, lies, n. 2, 3187
Laws for must be general..... 118
Map 3184, 3192
New parties 3185
Notice of proceedings 3184, 3185
Petition, form 3184
changing street 3190
notice of filing 3184
referred to city commissioners 3184
Plat.....3192, 3184
Prior proceedings 3193
Procedure 3184
Record of kept by clerk..... 3188
Remonstrance.....n. 2, 3187
Report of commissioners 3186
action upon 3187
referred back 3189
Reversion of land .....n. 1, 3184

Streets, vacation (city) (*cont'd*)

SEC.

Streets conforming to old streets 3194
Water-course 3184

Streets, vacation (town)

Acceptance 3382
Adjoining land-owner outside town can not object...n. 1, 3187
Alleys may .....cl. 9, 3333
Consent of owner necessary... 3382
Forms for 3382
Laws for must be general 118
Notice 3379
Order for 3380
Petition for 3379
Power to make.....cl. 9, 3333
Proceedings 3380
Remonstrance 3380
Title on vacation 3381
Town may.....cl. 9, 3333

Street railway company

Agreement to use highway ... 4158
Amendment or repeal of act authorizing 4153
Annual meeting of stockholders 4150, 4153
Articles of association, where filed 4144
Assessment of stockholders ... 4159
limit 4159
Bonds, may issue 4148
Borrowing money 4148
Burden on easement, is not, n. 1, 4153, 4158
By-laws 4151
Cable road .....n. 1, 4147
Consent of council 4154
of county commissioners.... 4155
Construction of track and width 4147
Corporation, when becomes .. 4144
Directors, election 4149
who may be 4150
Exclusive privilege .....n. 3, 4147
Extension of franchise forbidden .....4161*a* to 4161*d*
applies only to Evansville, n. 1, 4161*a*
Extension beyond city limits.. 4155
Fares 4151
Formation 4143
powers of and protection.... 4157
Gravel road, consent to use, 4156, 4158
Highway used for track, agreement 4158
Incorporation 4143
evidence of 4146
when may be 4143, 4144
Interest on bonds 4148
Monopoly.....n. 3, 4147

Street railway company (*cont'd*) SEC.
Name 4143
Notice to stockholders..... 4159
election..... 4150
term 4149
Officers..... 4149
Ordinance 4154
Powers..... 4145
borrowing money 4148
Preferred stock 4160
Repeal of statute, may be 4153
Route.....n. 1, 4147
Rules, may adopt 4151
beyond city limits..... 4157
Seal, may use..... 4144
Steam, use of.....n. 1, 4147
Stock, forfeiture..... 4159
preferred 4160
rules and regulations concerning..... 4159
shares 4143
transfer..... 4152
Stockholders, assessment 4159
liability 4161
meeting 4150
Street, use of,
4147, 4154; n. 7, 3161; n. 13, 3106
Taxation 6357
Terms prescribed by city 4147
Track, construction of..... 4147
use of by another company.. 4147
Vested rights 4158
Width 4147

Street railways (electric)
Contract of sale, recording....4158*e*
Electric road 4158*a*
Electricity, when may use 4158*a*
consent of council.....4158*a*
Loan, may secure 4158*b*
Mortgage, may execute 4158*b*
Sale, when may be conditional, 4158*d*
recording.... .....4158*d*
Title, when may be conditional, 4158*c*

Subpœna
City commissioners may issue, 3169
Form before mayor 3066

Subsequent purchaser
How affected by opening street, 3175

Suits by city
Actions for, penalty 3066
Averments to recover, penalty, 3064
Corporate existence, need not aver 3064
Denying publication of ordinance 3064
affidavit of 3064
Penalties for, how brought.... 3066
Prosecutions against railroads, 3065
Summons..... 3065
service of on railroads..... 3065
See Pleading and Practice.

Sunday SEC.
Liquor, license and effect upon, cl. 13, n. 2, 3106
Mayor can not hold court upon, 3062
Notices for street improvement .....n. 13, 3162
Ordinance concerning observance of.....n. 3, 3155
Saloons locked on ..cl. 13, n. 8, 3106

Supervisor of roads
Acts under street commissioner .....n. 2, 3098
Council elects..... 3098

Surface water
Accumulating on adjoining land,
n. 32, 3161; cl. 43, n. 17, 3106
City not liable for,
n. 8, 3106; cl. 43, n. 17, 3106
Floods and freshets.....n. 32, 3161
Sewer, to remove.....n. 2, 3151
Throwing on land in a stream, n. 7, 3106

Surplus revenue fund
Schools get..... 183

Surrender of charter
Proceedings for.....3127 to 3130

Survey
Adoption of by city 3250
Appeal from,
3073, 3073*a*, and n. 7, 3073*a*
City may make 3249
City civil engineer makes in city 3073
Effect 3249, 3250
evidence, 3249, 3250, and notes, 3250
prima facie correct 3073*a*
Fees.....n. 4, 3073*a*
Incorporation of town..... 3293
made public 3295
Re-survey ordered by court, n. 3, 3073*a*
Town may make 3252
order for..... 3249
adoption of survey 3249

Swamp lands
Proceeds of, schools get..... 183

Swine
Running at large.....cl. 21, 3106

Tables for games
City may regulate use of, cl. 14, 3106

Tallow chandleries
City may regulate.....cl. 4, 3106

Taverns
City may regulate.....cl. 13, 3106

Taxation (city) SEC.

Administrator in city may be assessed 3264
Ad valorem, limit of..... 3156
Agricultural lands 3261
Annexation of territory illegal, effect .....n. 8, 3196; n. 8, 3197
Anticipating revenue from.... 3159
Appraisement of county, city may adopt..... n. 4, 3157, 3160
Assessments, clerk may correct, 3157
Assessor's office abolished, 3262; n. 1, 3, 3071
duties 3071
Banks and stock..3156; 3254 to 3260
indebtedness deducted from, n. 7, 3254
Bitch..... 3156
Bonds of United States....n. 9, 3156
Board of equalization..... 3157
adoption of county appraisement 3160
meetings..... 3157
membership 3157
notice of meeting 3157
powers 3157
report..... 3157
valuation, may equalize 3157
Carriages..... 3156
City assessor, see Assessor (City.)
City clerk, see Clerk (City.)
City treasurer, see Treasurer (City.)
Collection 3225*a*; 3085
County treasurer collects 3225*a*
Correction of assessments..... 3157
Coupons received in payment, 3231*a*
Delinquent 3160, 3263
publishing list.....n. 1, 3091
sale for.....n. 1, 3088
Disannexation of territory, effect 3247
Dogs..... 3156
Errors corrected by clerk 3157
by council 3157
Executor 3264
Exemptions strictly construed, n. 7, 3156; cl. 49, n. 1, 3106
agricultural lands 3261
executor 3264
firemen 3202*c*
pauper 3156
Finding in cities.....3126, 3122
General powers, to make 3156
General tax law, controls, n. 2, 3156; n. 1, 3070; 3160, 3263
Guardians 3264
Illegal, may be injoined ...n. 5, 3070
Injoining .....n. 5, 3070
Installments, when payable in, 3160*a*, 3225*a*
resolution for 3160*a*

Taxation (city) *(cont'd)* SEC.

Insurance companies 3156
Interest, may levy to pay 3156
Levy, power of city to make, n. 6, 7, 3155
limit .....n. 6, 3156
ordinance..... 3157
when made ...3157, and n. 7, 3157
in large cities 3122
Library 3805, 3815
License taxes 3156
Lien 3086
personal tax is on real estate, n. 1, 3086
poll tax is on real estate, n. 1, 3086
superiority of city and county, n. 4, 3160
Limit, exceeding and effect, 3156; n. 8, 3157
Machine shop, aid for.....n. 6, 3152
Omnibus 3156
Orders used to pay tax with, 3080, 3082
Parks, tax to purchase.....3292*q*
tax to improve 3292*q*
Payment in installments, 3160*a*, 3225*a*
when must 3160
Penalties 3088
Platted territory.....n. 7, 3197
Poll..... 3156
lien on real estate .....n. 1, 3086
Railroad....3156, and n. 11, 13, 3156
aid to 3152
Rate of levy 3157
Refunding .....n. 5, 3157
Revenue, anticipating 3159
Road .....3161 (R. S. 1881, § 5067)
Sale, certificate for land 3091
deed for land .....n. 3, 3094
fees.....n. 1, 3094
how made.....n. 1, 3088
legalized .....n. 2, 3094
registry of 3092
title does not warrant...n. 2, 3088
Sinking fund, tax for 3158
State tax-law governs 3160, 3263
Stock .....n. 10, 3156
companies..... 3156
Treasurer's warranty 3091
Uniform and equal .....n. 5, 3156
Warrant..... 3070
effect .....n. 4, 3070
power under .....n. 4, 3070
Water-works 3283

Taxation (town)

Administrator in town..... 3264
Agricultural lands 3261
Collection.....3351, 3354, 3225*a*
County treasurer may collect, 3225*a*, 3353, 3354
Decedent's estate 3264

Taxation (town) (*cont'd*) SEC.

Distress and sale for..... 3351
Dog.....cl. 15, 3333
Duplicate of, to county auditor 3353
Errors, clerk corrects..... 3157
Executor 3264
Exemptions, statute necessary, n. 7, 3156
Gas tax 3337
General law governs 3263
Guardians 3263, 3264
Installments 3225*a*
Interest on bonds 3345
Levy, how made..... 3349
each year..... 3348
limit.....cl. 15, 3333; 3345
when .....n. 3, 3348
for schools.....cl. 19, 3333
Marshal collects 3351
list to 3349
Personal property, where taxed, n. 4, 5, 3348
Poll 3345
Railroad may tax..... 3156
Recovery of money voluntarily paid .....n. 2, 3351
Redemption of real estate 3352
Road tax.....3355, 3356; n. 2, 3365
Sale, personalty..... 3351
private, can not make...n. 1, 3351
redemption from 3351
Schools ....cl. 19, 3333
Street improvement tax 3363
Uniform and equal .....n. 5, 3156
Warrant 3349, 3350

Taxation (general law)

Absence of property owner, penalty.....6339; 6342
Administrators, payment by... 6443
re-imbursement of..... 6444
sale of property 6445
when must list..... 6282
when not by cities and towns, 3264
where taxed..... 6290
Adverse possession, effect on tax sale, n. 5, 8, 6480; n. 12, 6495
Affidavit of taxless person..... 6328
Agent, failing to list .....n. 1. 6297
how lists..... 6297
where taxed..... 6290
Animals where assessed ..cl. 2, 6290
Annual review of delinquents . 6513
Assessment.
administrator 6282
adults must list for 6290
agents, of 6297; 6290
attorney, of 6290
banks, of...3254; 3257; 6294; 6344
blanks for.....6330 6377
bridge companies, of 6296
brokers, of 6294

Taxation (general law) (*cont'd*) SEC.

canal lands, of..... 6319
capital-stock, when not liable, 6308
chattels mortgaged, of..... 6309
pledged, of..... 6309
consignee, of..... 6292
co-partnership 6291*a*
corporate property, of 6291
credits valued for..... 6332
deductions from..... 6332
decedents' estates, of..... 6290
deeds held as security, of.... 6302
devisees of undivided lands . 6321
doubts as to place of..... 6298
eating-houses, of 6294
engines, of..... 6315
equal and uniform, must be, 193
evasion provided against.... 6335
evidence, refusing 6341
executors, of 6282
false return 6339
ferries, of 6294
fiduciaries, of 6328
forms for..... 6336
franchises, of 6303
fraudulent return for..... 6339
gas companies, of 6295
government lands, of 6319
gravel-roads, of 6296
guardians, of..... 6290
heirs of undivided lands 6321
must list..... 6282
hotels of 6294
hydraulic companies, of 6295
idiots, of..... 6290
Indian-treaty lands, of..... 6275
infants, of..... 6290
information, citizens must give 6341
insane, of..... 6290
insurance companies, of 6294
interest on exempt bonds, of, 6304
interrogatories to tax-payer, 6331
failure to answer 6341
irregularities in, not vital... 6394
lands, of.....6271; 6377 to 6390
description of..6325; 6326; 6377
forfeited to state, of..... 6274
mortgaged, of..... 6310
sold by state, of 6274
townships, in several, of .. 6324
undivided, of..... 6321
leasehold estate, of 6318
livery-stables, of..... 6294
machinery, of..... 6315
males (of), for poll..... 6270
manufacturers, of..... 6313
merchants, of 6312
mining companies, of..... 6294
non-residents, bank-stock of, 6307
nursery stocks, of..... 6301
oath as to deductions 6334

Taxation (general law) (*cont'd*) SEC.

owner of property, of..... 6281
partners, of 6291*a*
personalty, of 6311
pawnbrokers, of..... 6316
personalty, of 6271; 6290
persons removing, of 6298
plank-roads, of..... 6296
polls, on 6269
poor, affidavit of 6328
proceeds of exempt lands.... 6300
property *in transitu*, of..... 6292
railroads, of..... 6360
receivers, of..... 6290
remedy of absent person.... 6342
sick person, of..... 6342
residence, at 6290
rolls of, replaced 1265
saloons, of 6294
saving-banks, of..... 6357
schedules for..... 6330
form of 6336
who must give 6328
school lands 6319
legalizing of 6519
sickness excuses for not listing..... 6339
sinking-fund lands, of 6274
state university lands, of, 6274; 6319
stock-jobbers, of..... 6294
stock of national banks..... 6306
non-resident owners of ... 6307
street-railways of..... 6296
survey of lands for..... 6325
time of—April 1, annually .. 6281
township, must be in 6290
transient persons, of..... 6314
treasurer (by), when..... 6456
trust-lands, of..... 6274
trustees, of..... 6290
turnpike roads, of 6296
uniform and equal, must be . 193
valuation by assessor ..6330; 6340
penalty added, when 6340
voluntary associations, of ... 6357
Wabash and Erie canal, of .. 6320
water-craft, of..... 6293
water-works companies, of.. 6295

Assessor (county).
assessment by, effect.....6396*b*
bond 6396*a*
deputy and his pay.....6396*b*
duties 6396*b*
to township assessor.....6396*b*
election.....6396*a*
member of board of review, 6397
oath..... 6396*a*, 6374, 6389
omitted property assesses, 6396*b*
pay 6396*a*
power 6396*b*
return of property, when makes 6396*b*

Taxation (general law) (*cont'd*) SEC.

term 6396*a*
vacancy 6396*a*

Assessor (township).
affidavit to realty return, form of..... 6386
assessment of lands 6391
sexennial 6388
of new improvements..... 6391
banks, incorporated 6345
unincorporated..... 6343
blanks, county auditor furnishes 6377
bond of..... 6374
buildings on right of way... 6380
entry of to appraise..... 6382
bureau of statistics, reports to..... 5720
corporations, domestic, statements 6357
deputies, appointment of, 5568, 6375
salary of..... 6376
election of.....4735, 6374
errors in valuation, corrects, 6388, 6390
evasion of assessments, duty as to 6335
exhibits, tax-payers make to, 6332
improvements, new, assesses, 6391
destroyed, duty as to..... 6391
interrogatories to tax-payers, 6331
irregularities of, do not vitiate 6394
list, refusal to make..... 6340
manufacturers' statements,.. 6313
meetings of assessors.....6330*a*
chairman of.....6330*c*
quorum.....6330*b*
secretary of 6330*c*
valuations agree upon....6330*d*
merchants' statements 6312
mines, valuation of 6381
oath of 6374
failure to administer..... 6396
personalty, to return of .. 6389
realty, to return of..... 6386
office.....6376*a*
pay.....6376*a*
personalty, valuation corrects 6390
notice to owner of..... 6393
oath to return of 6389
omitted assessment of 6393
tabular list of..... 6389
plats, county auditor furnishes 6377
quarries, valuation of..... 6381
railroad report to county auditor 6368
personalty, assessed by.... 6365
realty, except track, assessed by 6366

Taxation (general law)
(*cont'd*) SEC.
realty, affidavit to return of, 6386
list of, county auditor furnishes 6377
penalty for not returning 6378
tax-payers furnished with 6378
valuations affixing 6384
memorandum to owner ... 6387
omitted assessment of 6393
notice to owner of 6393
quantity, how determined, 6383
return of 6385
oath to 6386
realty, railroad, assessed by, 6366
sexennial assessment of .. 6388
valuation of 6379
refusal to list 6340
reports by—
blind, as to 6337
deaf and dumb, as to 6337
idiots, as to 6337
insane incurable, as to 6337
statistical 5720, 6338
returns by—
personalty 6389
realty 6385, 6386
tax-payers' statements 6395
valuation, when not made, 6378
salary of 6376
deputies 6376
service of, limited 6376
statements, corporations, domestic 6357
delivery of to county auditor 6395
false, punishment for 2156
prosecutor notified 6339
tabular, to county auditor, 6389
tax-payers, from 6330
statistical reports by, 5720, 6337, 6338
term of office 6374
transients, duty as to 6314
vacancies, county auditor fills 6374
valuations, agreement concerning 6330*d*
buildings on canal right of way 6380
buildings on railroad right of way 6380
improvements, new 6391
mines, of 6381
personalty, of...6365, 6390, 6393
quarries, of 6381
realty, of..6366, 6379, 6384, 6393
refusal to list, upon 6340
statements, upon 6330
Association, building, of..... 6373
voluntary, of 6357

Taxation (general law)
(*cont'd*) SEC.
when means person 6329
Attorney-general sues county treasurer 6506
express companies, sues 6352
sleeping-car companies sues, 6355
telegraph companies, sues .. 6353
telephone companies, sues .. 6354
Auditor of state sues for discovery 6437
book-keeping, prescribes system 6517
books and papers, may examine 6317
copies of act, furnishes..... 6518
corporation report makes, when..... 6359
equalization, certifies to county auditor 6412
express companies report to, 6352
forms and instructions by, 6369, 6515
information to 6317
insurance company's license, revokes..... 6352
payments, erroneous, certified to 6511
prosecuting attorney notifies, when..... 6503
railroads report to 6369
penalty for failure 6370
reports assessment of 6371
valuations certified to, county auditor 6410
sleeping-car companies report to 6355
telegraph companies report to 6353
telephone companies report to 6354
Bank stock, assessment.. 6343, 6344
in cities, of.....3254, 3260, 6350
county auditor's duty as to, 6346
dividends retained by bank for tax 6349
lien of taxes upon 6348
manner of listing 6345
national 6307
payment of taxes..... 6348, 6349
penalty for failure to pay, 6348
rate of taxation.....6306, 6344
statement of bank 6343
town may tax ..3254 to 3260; 6350
validity of law as to, n. 1, 6344; n. 2, 6345
valuation of stock 6345
where taxed.....cl. 3, 6290
Banks (of), national 6306
real estate of .....n. 2, 6343
savings 6357
statement of 6343
town may tax 6350

Taxation (general law) (*cont'd*)

Bankrupt sale does not avoid tax lien ..... n. 1, 6447
Bill of discovery to collect corporation taxes 6437
Blanks for..6330; 6336; 6377; 6401*d*
furnished by county auditor, 6336; 6330
prepared by auditor 6377
by state tax commissioner, 6401*d*
Blind, enumerated 6337
Boats, where listed 6293; 6272
part-ownership of .....n. 4, 6290
Bonds of United States 6331
Book-keeping, state auditor prescribes 6517
Books and papers, inspection of 6317
admissible as testimony..... 6508
examined by tax commissioner 6401*d*
Bounty tax valid .....n. 8, 6269
Bridge companies, of,....6296; 6356
Building associations, of, 6373; 6360
Buildings and fixtures 6272
on right of way, how valued, 6380
Bureau of statistics, assessor's duties as to.....6337; 6338
Canal boats, where listed 6319
lands taxable 6319
Cancellation of tax certificate, 6484
Cash book, keeping 6455
Cattle at pasturage .....n. 2, 6292
Certificate, assignee's rights under .....n. 1, 6464
assignment void, effect..n. 1, 6464
cancelled 6484
delay in issuing .....n. 1, 6464
lost..... 6484
sale of lands for taxes, of.... 6464
Chattel mortgage defined 6309
Choses in action, held for taxation .....n. 2, 6297
City, by what law taxed, n. 1, 6269; 6521*a*
assessor's office abolished ...6521*a*
board of equalization abolished 6521*a*
treasurer's powers.....n. 7, 6429
Clark's grant, rule as to quantity..... 6383
Clerk of circuit court makes transcript, when.....6322*a*
Coke companies, where assessed..... 6295
Collection of taxes 3258; 6425
overseen by tax commissioner 6401*d*
Commutation road tax, (R. S. 1881, § 5066)
Company, where assessed 6294
when means person..... 6329

Taxation (general law) (*cont'd*)

Compromise of taxes 6520*a*
certificate of 6520*b*; 6520*d*
city may 6520*e*
limit 6520*e*
three years' delinquency 6520*c*
Congress may levy, (R. S. 1881, § 8)
Consignee defined..... 6312
when not required to list 6312
Constitutional requirements as to .....n. 6, 6269
Contract executed after April first .....n. 2, 6281
Copies of law distributed 6518
Co-partnership 6291*a*
Co-tenant buying land of tenancy.....n. 3, 6466
Corporation, auditor of state, duty to 6359
assesses when 6437
bill of discovery against 6437
collection from..... 6435
common schools, taxed for .. 183
county board of review values 6358
domestic of 6357
failure to report, penalty, 6359; 6357
property, where assessed.... 6291
how rated 6365
statement of 6358
suit against for failure to report 6357
when means person 6329
County auditor, abstracts furnishes 6407
arbiter, when acts as..... 6473
bank statement, may compel, 6346
blanks, furnishes 6336; 6377
building associations, duty as to..... 6373
certificate of sale, issues..... 6464
corporations, duty as to schedule of 6358
crediting county treasurer .. 6428
deed on tax sale, executes... 6480
delinquent list, makes 6457
posts 6458
publishes 6458
reviews 6513
duplicate, makes..... 6417
abstract to state auditor... 6422
copy to county treasurer.. 6422
corrects errors in..... 6421
certifies to county treasurer 6421
form of.....6417 to 6420
errors, corrects..... 6390
extends taxes on basis of equalization..... 6413
fee for tax deed.....6480; 6482
assignment of tax certificate 6464

Taxation (general law)
(*cont'd*) SEC.
liability for neglect..... 6499
lists of land delivers to assessor 6377
member of county board of review..... 6397
notice of meetings of county board of review 6397
omitted property, assesses .. 6416
pay of.....n. 6, 6416; n. 1, 6417
for assessor's books ...n. 2, 6377
railroad, duty as to 6372; 6368
records proceedings of county board of review..... 6401
removal of tax-payer, duty as to 6439
reports blind, insane, etc.,... 6337
settles with county treasurer, 6500
statement to assessor 6373
tax sale, attends 6463
transfers land for taxation, 6322; 6323
fees for 6423
County board of commissioners levy tax 6269
County board of review, 6397 to 6401
appeal from..... 6397
appointment..... 6397
assessment lists, corrects.... 6397
duties.....6397; 6399
equalization by.....6397; 6399
power as to ...6397; 6399; 6400
errors, corrects..... 6397
lists, approves..... 6397
meetings of 6397; 6398
notice of..... 6397
members of..... 6397
oath of 6397
omitted property, assesses, 6397; n. 4, 6401*c*
organization 6397
pay of members 6397
powers 6397, 6399
to examine witnesses, n. 1, 6317
quorum 6397
record of proceedings 6401
reports to from county assessor 6397
sheriff serves notices for.... 6397
valuation, powers as to 6397
equalizes 6399
witnesses before..... 6397
County boundaries, levy after change .....(R. S. 1881, § 4211)
County orders received for taxes, (R. S. 1881, § 5922); n. 10, 6422
County purposes, for, (R. S. 1881, §§ 5753, 5754), 6269
limit of.....(R. S. 1881, § 5819)
County treasurer, account stated is evidence..... 6507

Taxation (general law)
(*cont'd*) SEC.
assessment, may make..... 6456
bank shares, collects tax on, 6349
bid by, for state 6432
bond, suit on 6428, 6506
cash book, keeps 6455
chattels, may seize 6429, 6433
delivering bond for...6429, 6430
sale of 6431, 6432, 6434
collection for his use 6504
on execution, for 6509
corporations, collects from.. 6435
county revenue, sued for.... 6506
credit, when not entitled to, 6428
delinquency, not credited with..... 6428
penalty on 6428
return of 6427
delinquent list, reviews 6513
demand for taxes, makes of.. 6427
liability for failing 6428
evidence *vs.* accounts stated are..... 6507
office books are 6508
fee, when not entitled to.... 6519
for demand 6427
levy and sale..... 6434
fiduciaries, collects from 6443
guaranty to purchaser, must give..... 6465
liability for neglect 6465, 6499
for not settling..... 6505
for not paying 6506
member of board of review, 6397
mistakes, corrects 6504
in payment 6453
notice to tax-payers 6424
office hours 6425
omitted property assesses... 6456
payments to state 6501, 6502
suit for delay 6503
railroad tax, collects 6372
refunding to by county commissioners 6510
by state..... 6511
when not allowed 6520
reports, monthly, by..... 6455
return, concerning personalty 6427
special 6438
road-tax paid to..... 6426
settlements, semi-annual.... 6500
mistakes in 6504
suit for not making..... 6505
suit against, docket-fee in... 6506
causes for 6503, 6505, 6506
when not to be brought..... 6503
Credits, claim to set-off, n. 8, 9, 6337
Custodian of property pays, 6443 to 6445
Death of owner, administrator lists 6282

Taxation (general law) (*cont'd*) SEC.

Debts, bank stock, deduction from....n. 3, 6336
deduction of....n. 2, 6336
due domiciled person ...n. 1, 6336
under tax law 1872 .....n. 6, 6336
taxable 6272
when.....n. 3, 6297; n. 2, 6298
Decedent's property, subject to, 6290, 6445
cities not to tax, when 3264
payments on..(R. S. 1881, § 2378)
towns, not to tax.....3264, 6333
Deduction by tax-payers..... 6333
verified..... 6334
Deed on tax sale 6479
as evidence .....6480; n. 2, 6495
certificate to be cancelled ... 6484
city's .....n. 1, 6479
co-tenant can not take ..n. 9, 6480
death of purchaser 6490
description of realty..... 6479
must be definite .....n. 2, 6487
devises, to 6490
effect .....6479; n. 6, 6480
evidence, is 6480
effect as .....n. 17, 6495
fee for making 6482
form of 6480
may vary 6481
heirs to..... 6490
infant's lands, for .....n. 1, 6467
laws, under former 6483
legal disabilities, effect upon, n. 1, 6467; n. 2, 6479
lost certificate, on 6484
married women's land, for, n. 1, 6467
prematurely issued ....n. 10, 6480
proceedings, when sale void, 6486
recitals in, effect, n. 1, 4, 7, 6480; n. 4, 6495
recording before delivery ... 6480
reforming.....n. 3, 6480
register of sales 6485
sale, when invalid 6487
set aside .....n. 18, 6497
security, held as..... 6302
town's .....n. 1, 6479
treasurer failing to sign, effect .....n. 2, 6480
when issued..... 6479
Definition of tax .....n. 5, 13, 6269
Delay not to vitiate assessments 6514
Delivery bond 6429
form 6430
Delinquent list, county auditor makes 6457
auditor can not print....n. 1, 6458
contents .....6457; n. 2, 3, 6458
copy of, posting 6458

Taxation (general law) (*cont'd*) SEC.

publication 6458
in Sunday newspapers, n. 7, 6458
notice of sale 6458
omitting property from..... 6513
pay for publishing..n. 4 to 6, 6458
Delinquents, removal to another county 6438
county auditor certifies as to, 6440
entry on duplicate as to 6440
fee for collecting 6442
payment by, before sale 6454
treasurer collects fees..... 6441
Delinquent tax, annual review of 6513
collection by prosecuting attorney.....6491, 6492
payment at any time. 6454
when becomes.....n. 4, 6426
Delivery bond, county treasurer takes 6429
Demand, of delinquents 6427
penalty on treasurer for failure to make..... 6428
Description, of land, sufficiency, 6378, 6383, 6325, and n. 1 to 3, 6325
in deed .....n. 2, 6487
on return-book..... 6385
personalty, of 6327
Direct taxes apportioned, (R. S. 1881, § 2)
congress, by .....(R. S. 1881, § 9)
Division by township line 6324
Double assessment .....n. 10, 6459
Dogs, assessing....6329*r*; n. 7, 6269
act of 1881 repealed 6329*j*
assessor liable to fine, when, 6329*c*
claim for damages to sheep, 6329*h*, 6329*q*
conflict in laws .....n. 1, 6329*a*
fund, how used 6329*g*
custodian of 6329*g*
distribution of 6329*p*
paid to township trustee..6509*a*
use of 6509*a*
grand jury investigates 6329*o*
harboring unregistered dog, 6329*n*
injuring 6329*f*, 6329*m*
keeping unregistered dog...6329*n*
killing.....6329*f*, 6329*m*
oath of assessed person 6329*d*
payment of losses 6329*i*
rate of taxation 6329*b*
resisting.....6329*k*
"runabout" dog.....6329*l*
killing 6329*l*
schools, gets surplus revenue from.....6329*i*
See Schools.
sheep-killing dog.....6329*e*

Taxation (general law) (*cont'd*) SEC.

stealing 6329*f*
suits for payment of sheep killed .....n. 2, 6329*i*
township treasurer lists, 6329*a*; 6329*b*
Duplicate, abstract of sent to state auditor..... 6422
adding up..... 6421
authority under, n. 1, 6427; n. 6, 6429
certifying to.....n. 9, 6422
defined .....n. 9, 6422
delivery to treasurer..... 6422
failure to make on time, n. 1, 6422
description of land upon 6377
division of county, n. 10, 6422; (R. S. 1881, § 4211)
errors in, correcting 6421
estimates on..... 6418
execution serves as.....n. 7, 6422
exhibit to pleading, is not, n. 6, 6422
how made 6417; 6418
incomplete, effect. .....n. 8, 6422
installments, how arranged.. 6419
presumption as to .....n. 3, 6417
restoration of destroyed, (R. S. 1881, § 1263)
payments on (R. S. 1881, § 1264)
Eating-house, where listed.... 6294
Educational institute, exemption from .....cl. 5, 6276
Embezzlement of taxes, (R. S. 1881, § 1951)
Engines defined..... 6315
Equality of assessment required, 193; 6269
Equalization, board of, abolished in city 6521*a*
Errors, auditor corrects ..6390; 6421
assessor..... 6388
city and town clerk ....n. 1, 6421
Estate, levy on property of, n. 2, 6445
who pays .....n. 3, 6445
Evasion of interrogatories 6335
Evidence, stated account *prima facie* 6507
books and papers is 6508
Executors must pay 6443
cities not to tax, when..3264, 6333
must list property 6282
re-imbursed..... 6444
sale of property of..... 6445
towns not to tax, when..3264, 6333
Exemptions, acres, number of, n. 5, 6276
bequest to college 6278*a*
cemeteries, of 6276
charitable institutions, of, 6276; 6278
churches, of .....n. 1, 6276

Taxation (general law) (*cont'd*) SEC.

pews, of..... 6276
city property, of..... 6276
college property..... 6276
common school property.... 6276
constitutional limitation, of, 193
county property, of..... 6276
debtors (of), tax not affected, (R. S. 1881, § 717)
educational institutions, of.. 6276
endowment funds ..6277*a*; 6276
interest, when not..... 6304
exceptions from 6277
government property, of.... 6276
greenbacks .....n. 9, 6276
how statute construed..n. 3, 6276
institution construed ....n. 4, 6276
libraries, public, of..... 3808
stock of..... 3810
literary institutions, of..... 6276
manual labor school, of 6276
masonic building .....n. 10, 6276
Miami Indians, of....6278*b*; 6278*c*
national bank notes ....n. 9, 6276
national bonds, of .....n. 9, 6276
parsonage, of..... n. 2, 6276
poor, from poll tax, (R. S. 1881, § 5808)
road-tax, from (R. S. 1881, § 5066)
power to make.....n. 8, 6276
proceeds of realty, when not, 6300
school lands..... 6276
scientific institutions, of, 6276; 6278
state board of agriculture, of n. 11, 6276
town property, of 6276
township property, of 6276
unmarried females.....n. 6, 6276
United States property of.. 6276
Exports congress can not tax, (R. S. 1881, § 9)
Express companies, of 6352
Extinguishment of public debt, (R. S. 1881, § 194)
False list given, penalty, (R. S. 1881, § 2150); 6339; 6337*a*; 6521*c*; 6521*b*
constitutionality of statute, n. 2, 6339
indictment .....n. 1, 3, 6339
False valuation, penalty, (R. S. 1881, § 2150)
Fees, auditor's for tax deed, 6480; 6482
statute of limitations, as to, n. 3, 6504
treasurer's for levy and sale . 6434
Ferries, of 6294
reports of to assessor 6356
penalty for failure to make, 6356
Fiduciaries must list and pay tax 6443; 6298*a*

Taxation (general law) (*cont'd*) SEC.

re-imbursement 6444
sale of property 6445
Firm taxes, collection .....n. 1, 6447
when means person 6329
Fixtures, of 6272
Foreclosure of tax lien..... 6491
Foreign bridge companies, of.. 6356
ferry companies, of 6356
insurance companies, of 6351
Forfeited lands..... 6274
Forms 6515; 6401*d*
state tax commissioners prepare 6521*e*
Franchises defined 6303
Fraudulent return..... 6339
Free gravel roads, validity of, n. 10, 6269
French's grant, description of land in..... 6383
Gas companies, of..... 6295
Government lands, of..... 6319
Goods and chattels 6272
Gravel road companies, of, 6296; 6357
Greenbacks .....6331; n. 9, 6276
Guardians, of.....6330; 6443
cities not to tax, when ..3264, 6333
payment of 6443
re-imbursement.... 6444
sale of property.....n. 1, 6445
towns not to tax, when..3264, 6333
where taxed..... 6290
Hogs packed for shipment, n. 2, 6292
Hotels, of..... 6294
Hydraulic companies, of..... 6295
Idiots enumerated 6337
Illegal tax injoined ....n. 9, 11, 6269
good in part.....n. 3, 4, 6422
Improvements destroyed, rebate 6379
how valued 6379
redemption, in case of 6477
Indians, lands of, 6275; 6272; 6278*b*; 6278*c*
decisions concerning....n. 3, 6272
Injoining, collection of when illegal, n. 11, 6269; n. 2 to 4, 6422; n. 10, 6429; n. 1, 6430
tender .....n. 4, 6479
when plenty of personalty, n. 9, 6495
Insane enumerated 6337
Inspection of books and papers, 6317
Installments, when due 6426
Instructions by state auditor .. 6515
Insurance companies, of..... 6351
constitutionality of laws concerning....n. 2, 6351; n. 1, 6352
city court sue for, n. 2, 6351; n. 2, 6352

Taxation (general law) (*cont'd*) SEC.

foreign companies.....6351*a*
penalty for failure to pay ... 6351
rate of.....6351*a*; 6351
reports of..... 6351
retaliatory law 6351*a*
where listed..... 6294
who lists..... .....n. 1, 6351
Interest on exempted funds ... 6304
compound not allowed..n. 1, 6422
not collectible on taxes, n. 6, 6422
redemption, rate 6466
when ceases on tax sale..... 6466
Interrogatories to tax-payer .. 6331
refusing to answer..... 6341
sworn to..... 6335
Lands, defined 6272
reserved 6275
rules as to quantity..... 6383
sold by state 6274
surveying..... 6383
valuation of..... 6379
Leasehold defined..... 6318
Legalization of tax sale of school lands 6519
Levy, different kinds..n. 2 to 3, 6269
mandate to compel ....n. 12, 6269
state tax commissioners determine 6401*d*
when and how made 6269
by city .....n. 3, 6401*c*
Library tax, cities may levy, 3804; 3815
township trustee may levy .. 3805
Lien, accrued taxes continued, 6521
all property liable for..... 6447
attaches when.....n. 7, 6422
avoiding, tender.....n. 14, 6497
bankruptcy does not divert, n. 3, 6429
building association stock, on, 6373
complaint to enforce, n. 2 to 6, 6496
answer .....n. 16, 17, 6497
county treasurer paying by mistake, has 6453
deed void, effect.....n. 12, 6497
destruction of by sale or transfer.....6446; 6447
entireties, land held by, n. 2, 6446
existing, saved..... 6512
foreclosure, n. 1, 6464; 6491; n. 5 to 10, 6497
holder may pay and enforce, n. 1, 2, 6451
when must take notice, n. 20, 6497
national bank shares, on.... 6348
occupant, when has 6323
payment, partial, effect, n. 2, 6448
on part of realty 6449
perpetual .....n. 1, 6446

Taxation (general law) (*cont'd*) SEC.

personalty (of) is on realty, n. 1, 6447; n. 1, 6448
poll tax, of, . . n. 1, 6446; n. 1, 6447
priorities of, n. 2, 3, 6446; n. 1, 6447
railroad, on 6372*a*
sale or transfer of property, effect 6446; 6447
school mortgage (of) superior to . . . . . n. 3, 6479
statute of limitations, . . n. 13, 6497
superior to execution . . . n. 2, 6427
judgment . . . . . n. 7, 6496
tax (of) perpetual 6446
taxes dropped, does not divest . . . . . n. 7, 6422
transferred when 6488
treasurer paying by mistake, has lien 6453
when attaches 6446; 6447
who enforces . . . . . n. 4, 6497
Lists of lands, assessor gets . . . 6377
given to land-owner by assessor 6378
how prepared 6378
land-owner's duty as to 6378
List of personalty, owner makes, 6331*a*
failure to make 6331*b*
evidence of what . . . . . n. 2, 6330
replevying suit . . . n. 10, 11, 6336
Loan associations, of 6373
Lots and subdivisions, how listed 6326
Machinery defined 6315
Manufacturers defined 6313
on Wabash and Erie canal . . 6320
Married women 6290
Memorandum delivered to land-owner 6387
Merchants defined 6312
Miami Indians, exempt from . . 6278*b*
action to quiet title 6278*c*
Mills on Wabash and Erie canal, 6320
Mining companies, of 6290; 6357
Mines and quarries, of 6381
Mistakes, how corrected 6504
"Money at interest" . . . . . n. 4, 6336
defined . . . . . n. 1, 6272
Mortgage, defined 6309; 6310
inferior to tax lien . . . . . n. 2, 6446
school fund superior to . . n. 3, 6446
Mortgagee's rights . . . . . n. 8, 6495
Mortgagor must pay . . . . . n. 9, 6459
Mutes enumerated 6337
Name and address of tax-payer, 6450
immaterial as to validity 6489
in whose assessed 6298*a*
sale of land in stranger's, n. 1, 6489
National bank shares, where taxed 6387; 6306

Taxation (general law) (*cont'd*) SEC.

Negligence of county officers . . 6499
New county, not to affect, (R. S. 1881, § 4226)
New trial as of right . . . . . n. 6, 6296
Non-resident, property of, n. 1, 6292
bank-shares of taxed 6307
purchaser at tax sale must file bond 6459
Notes, held for collection, n. 3, 6271; n. 2; 6297
in other states . . . . . n. 1, 6330
Notice of appraisement of lands 6378
assessment of omitted property 6416
failure to give, effect, n. 6, 6429; n. 1, 6424; n. 10, 6459
lien-holder must take . . n. 20, 6497
meeting of county board of review of 6387
sale of personalty of 6431
to tax-payers 6424
Nursery stock defined 6301
Oath, failure to administer, penalty 6396
of assessor to return 6386, 6389
refusal to take, (R. S. 1881, § 2150); 6340
Occupant must list lands 6323
paying taxes on lands 6452
right of action of 6323
Officer failing to perform his duty, penalty 6521*d*
Official inspection 6317
Omitted property, assessor's duty as to . . . . . n. 1, 6416; 6393
city or town may assess, n. 1, 6456
constitutionality of law authorizing . . . . . n. 6, 6401*c*
county auditor assesses 6416
county board of review assesses . . . . . 6397; n. 4, 6401*c*
current year . . . . . n. 3, 6416
how assessed . . . . . n. 3, 6416
notice to owner of 6397
revaluing, can not be as, n. 2, 6456
tax ferrets . . . . . n. 7, 6416
treasurer assesses 6456
when must be assessed . . n. 1, 6393
Opinion on tax law, who gives, 6401*d*
Owner on April first liable . . . 6281
death of 6282
Palace car companies, of 6355
Papers and books, inspection of 6317
Partition proceedings, recorded . . . . . 6322; n. 2, 6322*a*
Partners . . . . . n. 1, 6291*a*
Partnerships defined 6311
how listed 6311
Pawns defined 6309

Taxation (general law) (*cont'd*) SEC.

Pawn-brokers defined 6316
Payment of delinquent before sale 6454
cash-book kept of 6455
illegal tax, recovering back, n. 12, 6429
lien-holder may make 6451
mistake by treasurer, effect, 6453, 6504
monthly report made of 6455
occupant may make 6452
part of, effect 6448, 6449
receipt for 6450
loss 6450
tenant may make, of..... 6452
time, when required... 6426
void currency, in .....n. 2, 6426
Perjury .....n. 5, 6401*c*; n. 1, 6317
Penalty, amount 6426
accrued, continued in force.. 6521
failure to administer oath... 6396
to list lands 6378
false statement 6339
levy, failure to make, effect on ..... n. 3, 6426
part of tax .....n. 5, 6426
refusal to give evidence..... 6341
town's liability for 6428
when attaches 6426
Person defined 6329
Personalty, blanks for listing, 6330, 6336
agent or attorney must list, 6287, 6297
corporations, of ...6289, 6291, 6294
defined 6272
description on tax-books.... 6327
destroyed, rebate for..... 6279
doubts as to, how settled.... 6299
equalization of.....6397 to 6399
executor or administrator shall list 6290
farming tools, in cities..... 3261
in towns 3261
in transitu 6292
levy and sale of .....6429 to 6434
listing, manner of....6330 to 6342
time of 6280
when listed 6298*a*, 6290
where listed ..6286, 6290 to 6296
who shall list 6290, 6282
non-residents .....cl. 4, 6290
not in existence April 1st, n. 1, 6280
person removing, of..... 6298
pledged and mortgaged, of.. 6309
sale of, for taxes.....6429 to 6434
before realty, n. 1, 6432; n. 1, 2, 3, 6, 6495
subject to.....6269 to 6271
tangible, when taxed, 6280 to 6282

Taxation (general law) (*cont'd*) SEC.

United States land, on..... 6290
water-craft..... 6293
Place of residence, dispute concerning..... 6299
Plank road companies, of, 6357, 6296
Plats, entered for taxation 6392
prepared by assessor..... 6377
Pledges defined 6309
Poll tax, 6269, 6270 (R. S. 1881, § 5090)
exemption from .....n. 1. 6270
lien of.....n. 2, 6270
realty liable for.....n. 2, 6270
Poor, for support of, (R. S. 1881, § 6099)
Poor, asylum to build, (R. S. 1881, § 6093)
Pork, packed .....n. 2, 6292
Post-office address of tax-payer, 6450
Power to tax ..... n. 13, 14, 6269
Prosecuting attorney, duty concerning false statements .. 6339
enforces liens of..... 6491
docket-fee of 6492
lien for fees..n. 1, 6503; n. 1. 6506
treasurer sues..... 6503
fees .....n. 1, 6503; n. 1, 6506
Public lands defined..... 6319
Purchaser of land not liable for tax .....n. 8, 6429
city can not be.....n. 2, 6432
enjoining sale .....n. 6, 6459
Quadrennial assessments of land..... 6388
Quarries, valuation of..... 6381
Quieting title to lands..... 6496
complaint for, n. 11, 6495; n. 2, 3, 6496
when suit brought for...n. 1, 6495
Railroads, of..... 6360
aid to ....n. 8, 6269
appraisement of..... 6362
attorney-general sues..... 6370
buildings, where taxed..... 6363
city may tax 6365
county auditor's duties, 6372; 6407
county treasurer collects.... 6372
depots, where taxed..... 6363
errors in corrected by assessor 6388
foreign companies .....n. 1, 6360
how assessed 6410
inventory to county auditor. 6367
lien of tax on 6372*a*
personalty, where assessed .. 6365
failure to report 6370
who assesses 6371
realty defined 6366
where listed..... 6366
return to assessor by auditor, 6368
rolling-stock defined..... 6364

Taxation (general law) (*cont'd*) SEC.

state tax commissioner assesses 6371
report to..... 6371
statement by to county auditor 6361; 6367
to state auditor 6369
penalty for neglect..... 6370
station-houses, where taxed.. 6363
time of listing..... 6360
new companies..... 6361
track, how assessed 6296
how described 6362
defined.....n. 1, 6362
turn-outs, where taxed 6363
valuation on duplicate 6372
apportionment 6363
deduction, when..... 6383

See Railroad.

Realty, assessment of...6377 to 6390
defined 6272
description of..... 6325
equalization, correction of errors in..... 6388
county board of review, duty..... 6397
state board of, duty..... 6406
exempt, when 6276
exception 6277
improvements valued..... 6384
destroyed 6391
in-lots, valuation of..... 6379
irregularities not vital 6394
lists of, from county auditor. 6377
assessors must procure, of. 6378
improvements, of..... 6391
memorandum to owner..... 6387
mines valued..... 6381
oath of assessor to return.... 6386
omitted property added 6393
out-lots valued 6379
owner called on for list of .. 6378
notice to..... 6378
plats of additions..... 6392
preservation of..... 6377
townships of 6377
quadrennial assessment of .. 6388
quantity, how fixed 6383
quarries valued 6381
return of assessment..... 6385
verification of..... 6386
sale of.....6457 to 6465
schedules preserved 6395
title-papers to be shown 6378
unsold for three years 6491
valuation of.....6379; 6384
when owner fails to make, 6378
Rebate by county auditor..... 6279
Receiver must pay taxes..... 6443
re-imbursement 6444
sale of property..... 6445

Taxation (general law) (*cont'd*) SEC.

Receipt given by county treasurer 6450
evidence, as .....n. 1, 6450
loss of 6450
mistake given by .....n. 11, 6429
Recorder of county, duty in partition.....6322*a*
Redemption allowed..... 6466
auditor settles fee 6473
certificate of 6478
conjoint assessment 6474
continuance of former rights, 6521
contribution, when made.... 6472
costs of.... 6466
idiot, by 6467
improvements effected by... 6477
infants, by..... 6467
insane, by..... 6467
interest, when ceases..... 6466
joint assessment..... 6474
judgment 6476
recovery 6475
memorandum of..... 6478
part of, payment for specific, 6470; 6471
effect of..... 6472
payment apportioned..... 6469
penalty 6466
personalty can not be, n. 2, 6469; n. 2, 6521
priority of judgment..... 6476
proportion recovered 6475
record of 6478
share of undivided part 6469
specific part..... 6470
of undivided realty 6471
time of 6466
undivided interest of...6468; 6469
void, sale, effect, n. 1, 6466; n. 1, 6488
Refunding, annexation proceedings.....n. 5, 6486
appeal, concerning 6487*c*
board of county commissioners make 6487*a*
complaint to enforce, n. 3, 6487*a*; n. 4, 8, 6486*c*
failure of tax lien .....n. 8, 6487*a*
judgment, effect of as to sale, n. 3, 6488
mandate to compel ....n. 10, 6486
omitted property .....n. 7, 6487*a*
purchase-money .....n. 2, 6486
statute necessary to authorize, n. 1, 6510; n. 1, 6511
repeal of, effect .....n. 1, 6521
state to county 6511
state's portion.....6487*b*; 6510
valuation increased, effect, n. 6, 6487*a*
when must be made ..n. 6, 9, 6486

Taxation (general law)
(*cont'd*) SEC.
shall not be..... 6520
wrongfully assessed defined, n. 2, 6487*a*
Re-imbursement to fiduciaries, 6444
Release by auditor from tax... 6287
Removal between April 1st and June 1st 6298
from county..... ... 6438
auditor's duty and fees, 6439 to 6442
collection of..... 6441
entry on tax duplicate 6440
treasurer's special return.. 6438
Rent, tenant paying taxes out of 6452
Repeal of statute, effect on taxes.....n. 1, 6521
Repealing section 6521*b*
Replevin, when does not lie, n. 10, 6429
Reports, monthly, by treasurer, 6455
Reservations 6275
Residence defined.....n. 1, 6271
Return-book..... 6385
of treasurer 6427
special 6438
Revaluing, auditor can not, n. 2, 6456
Road companies, of 6296
Rolling stock defined, 6364; n. 1, 6364
Sailing boats, of..... 6293
Sale of personalty.....6429 to 6434
demand for taxes necessary, n. 2, 6427
fees of treasurer..... 6434
fiduciaries, property of sold.. 6445
levy upon for taxes due..... 6427
duplicate authorizes.. n. 5, 6422
for what taxes....n. 4, 6429, 6433
on corporation property, n. 5, 6429
when made, n. 9, 6429; 6433; n. 2, 6438
void, when .....n. 1, 6429
manner of making..... 6432
notice of 6431
purchase by treasurer 6432
surplus 6432
Sale of realty 6457
adjourning sale ..... n. 3, 6459
adverse possession, effect upon..... n. 5, 8, 6480
auditor attends 6463
deputy of may make ..n. 4, 6458
keeps record of 6463
certificate of 6464
assignment of..... 6464
fees for 6482
city cannot be a purchaser, n. 2, 6432
clerk of sale, county auditor is 6463
demand for personalty, .n. 2, 6459

Taxation (general law)
(*cont'd*) SEC.
former laws ..... n. 15, 6497
guaranty by treasurer 6465
inadequacy of price.....n. 7, 6458
injoining.....n. 6, 8, 10, 6458
invalid, when..... 6486, 6487
lien of state transferred, when, 6488
manner of selling lands.... 6459
more than one tract..... 6461
name of owner immaterial .. 6489
non-resident purchaser files bond 6459
notice of sale 6458
part of tract sold..... 6460
payment of bids..... 6462
failure to make, penalty.. 6462
possession of land under tax deed.....n. 16, 6495
private sale once allowed, n. 5, 6459
purchaser's remedy..... 6465
record of, kept by auditor .. 6463
repeal of statute authorizing, n. 12, 6495
re-sale, when bid unpaid.... 6462
setting aside sale, effect n. 1, 6486; n. 5, 6495; n. 8, 10, 6459
statute strictly construed, n. 1, 6459
of limitations.....n. 13, 6497
subrogation to tax lien, n. 1, 6449; n. 2, 6451
town can not be a purchaser, n. 2, 6432
validity, proof of....n. 10, 11, 6495
warranty, how tax lien effects, n. 14, 6495
Saloons, of..... 6294
Savings associations, of 6373
banks of..... 6357
Schedule, form of 6336
conflicting with statute, effect .....n. 5, 6336
School lands, when taxable, 6319, 4364
assessment of, legalized..... 6519
mortgage lien superior to taxes.....n. 3, 6479
School purposes, for, 4460; 4461; 4465 to 4471; 4474; 6269
Settlement *prima facie* evidence.....6507; n. 2, 4, 7, 6500
mistakes in..... n. 5, 6, 6500
refunding by county treasurer 6510
by state treasurer..... 6511
when county treasurer makes, 6500
Shares of stock, of, 6308; cl. 3, 6290
situs for taxation.....n. 2, 3, 6290
Sheriff serves notices when.... 6397
Ships, of..... 6272
Sickness, exempts from penalty, 6339; 6342

Taxation (general law) (*cont'd*) SEC.

Sinking-fund lands 6272
Sleeping-car companies, of.... 6355
Special return by treasurer.... 6438
State purposes, for 6269
Statements of tax-payer..... 6330
Statute of limitations, effect, n. 1, 6486
Staves .....n. 1, 6292
Steamboats, of 6293
Stock shares, of..... 6272
defined 6291
foreign citizen owning..n. 1, 6272
situs for.....n. 2, 3, 6290
when can not be assessed, n. 1, 6357
Stock-jobbers defined..... 6294
Street railways, of..... 6296
Street improvements, not exercise of taxing power.n. 10, 6269
Subdivisions, how listed 6326
Suits, penalty saved..... 6521
to collect taxes..... 6491
to quiet title 6496
Survey, when owner must make, n. 1, 6383
Tabular list given to auditor, contents 6389
Tax commissioners (state), abstract of land assessments for 6407
examination of..... 6406
additions, fixes rate of 6408
aggregate valuation of..... 6406
appeals to 6401*m*; 6401*i*
assessments equalizes 6406
bond of.....6401*b*
classification of property.... 6408
contempts, punish 6401*m*
counties, how equalizes..... 6409
deduction, fixes rates of..... 6408
duties of.....6401*d*; 6401*m*; 6406
expenses of 6401*f*; 6401*m*
governor's duty limited.....6401*j*
members of board.....6401*a*
meetings of 6401*m*
duration of..... 6405
oath of.....6401*b*; 6401*n*
may administer to witness, 6401*m*
pay of..... .....6401*f*
powers of 6401*m*
printing, for.....6401*l*
quorum 6401*e*; 6405
railroads, how assessed by.. 6410
statements of.....6371; 6407
rates certified to auditor of state 6412
record of.....6401*e*
reports to general assembly.6401*d*
published..... 6414
secretary.....6401*j*

Taxation (general law) (*cont'd*) SEC.

duties of..... 6404
oath of 6404
terms of.....6401*c*
vacancy in, how filled 6401*k*
visits counties.....6401*d*
witnesses may examine.....6401*g*
penalties as to.....6401*k*
Taxes, how extended 6413
Taxless person, must give affidavit 6328
Tax title, action to quiet..... 6496
decree that owner must pay. 6496
demand for personalty..n. 2, 6459
invalid for want of form, is not..... 6498
legality presumed 6498
liability of county officer for neglect 6499
lien of state to holder 6497
presumptions as to papers.. 6498
proceedings..... 6496
proof to defeat 6495
purchases from mortgagor, n. 2, 6272
recovery by holder of..... 6497
redemption, not allowed.... 6497
rents, who liable for....n. 16, 6495
rights against lienors..... 6496
sale without appraisement.. 6497
steps necessary to vest in purchaser.....n. 1, 6480
subrogation of purchaser, n. 1, 6449; n. 2, 6451
suits to quiet title 6496
tax not invalid, when..... 6498
treasurer liable for failure of, 6499
warranted, title is not by state, n. 2, 6432
city or town does not.n. 15, 6495
Telegraph companies, of..... 6353
Telephone companies, of..... 6354
Tenant may pay tax..... 6452
contribution between co-tenants.....n. 1, 6452
duty to pay tax.....n. 1, 6452
purchasing, effect as to co-tenant .....n. 7, 6495
rent for, retains..... 6452
when can not purchase..n. 3, 6466
Tender of taxes, when necessary .....n. 4, 6479
Time of assessing 6330; 6280
of payment 6426
Towns, of bank stock by, 3254 to 3260
laws, by what governed, n. 1, 6269
Township tax ...(R. S. 1881, § 5995)
line dividing farm 6324
Track of railroad, of..... 6363
Transcript for taxation 6322*a*
Transfers of realty 6322, 6423

Taxation (general law)
(*cont'd*) SEC.
auditor enters on duplicate.. 6417
essential to lien of personalty or realty .....n. 1, 6447
how made.....n. 1, 6281
Transient persons defined 6314
Transitory property defined .. 6292
Treasurer of state, foreign express companies pay to ... 6352
foreign insurance companies pay to 6351
receives money from counties 6501, 6502
sleeping car companies pay to 6355
telegraph companies pay to, 6353
telephone companies pay to, 6354
Trustees, of 6290, 6443
re-imbursement..... 6444
sale of property 6445
Turnpike companies, of 6296
Uncollected tax, how added... 6516
Undivided realty, of..... 6321
Uniform and equal, must be, 193; n. 6, 6269
system of book-keeping 6517
University lands, of.....6319, 6272
United States, property of, exempt .....cl. 1, 6276
Unsold land, list to prosecuting attorney 6491
suit to enforce lien 6491, 6494
city a party 6491
decree, form of 6492
evidence..... 6493
parties to 6491
town a party..... 6491
sale, and use of proceeds.. 6492
Valuation, assessor fixes..6336, 6330
auditor can not increase, n. 5, 6416
equal, must be 6269, 6399
final, when .....n. 7, 6401*c*
how fixed.....6384, 6383
power of assessor in fixing.. 6382
reduction of, not allowed.... 6390
Vessels, of..... 6272
Voluntary associations, of 6357
payment, recovery of taxes so paid.....n. 4, 6487*a*
Wabash and Erie canal defined 6320
warehouses on 6320
Warranty of title .....n. 2, 6486
Water-craft, of 6293
Water-works, of 6357, 6295
Wharf-boats, of..... 6293
When chattels listed 6280
where..... 6290
Who liable for taxes.....n. 1, 6323

Telegraph Company
Exercise of eminent domain, n. 1, 66

Telegraph company
(*cont'd*) SEC.
poles in street .....n. 13, 66
taxation, of..... 6353

Tenant
Damages, when entitled to, n. 7, 3170
Pays taxes..... 6452

Theatres
City may regulate .....cl. 15, 3106
when can not require license of .....cl. 16, 3106

Timber
Obstructing street ..cl. 18, n. 3, 3106

Time
Fractions of a day .....n. 5, 3067

Tippecanoe battle-ground
Inclosure with fence..... 232

Tolls
Collecting within city ...cl. 40, 3106
Gate in city an obstruction, cl. 18, n. 7, 3106

Torts
City liable for officers' acts, n. 15, 3106; n. 2, 3074

Town
Accounts of treasurer examined, 3322
Addition to, may vacate 3383
Appointment of officer 3312
Appropriation of money..... 3339
Association to build..... 3493
procedure .....3493 to 3501
Attorney fees, when liable for, n. 3, 3327
Bonds, power to issue, n. 3, 3343; n. 1, 3342
for market-house 3343
how sold 3344
tax to pay..... 3345
Borrowing money, when may cl. 1, n. 1, 3333
Bridges, control over..... 3367
Claims, how allowed 3340
Commons, may control..... 3338
Contracts, officers can not be interested in 3308
Dagerous materials, power over, cl. 3, 3333
Dissolution, town may be..... 3318
debts 3318
election..... 3318
notice of election 3318
order for election in 3318
petition for 3318
return 3318
statute must be followed, n. 1, 3318
Debts, limited..... 220
state can not assume..... 198
Fines, may impose 3346
limit 3346

Town (*cont'd*) SEC.
Fire wardens, appoints ..cl. 10, 3333
Fire companies, organize .cl. 3, 3333
Fuel for schools, provides, cl. 17, 3333
Gas pipes in street,
n. 5, 3328; 3110*a*; 3110*b*
Inhabitants not the town..n. 5, 3293
Insuring town property ..cl. 12, 3333
Judicial notice of location..n. 7, 3292
Jurisdiction ....n. 1, 3106; n. 2, 3297
Laws changed or repealed, may be.....n. 2, 3106
License, grants..... 3322
receipt of money by marshal, 3322
treasurer grants..... 3322
Lighting streets..... 3336
Loans..... 3342
limit..... 3342
Local self-government....n. 2, 3106
Meetings of trustees .....n. 5, 3313
notice of special..... 3332
of voters..... 3332
Money how drawn from treasury.....3341; 3339
Name includes cities,
n. 3, 3293; n. 1, 156
changing..... 3384
notice for..... 3384
order for..... 3384
petition for..... 3384
Negligence, liable for .....n. 2, 3328
Officers, pay of 3330
bonds of..... 3320
books, turns over..... 3321
interest in contract,
n. 4, 3308; n. 2, 3313
Ordinance for welfare of, may adopt.....cl. 16, 3333
Plat, may make 3252
Powers limited .....3339; n. 3, 3106
failure to exercise .....n. 4, 3106
over bridges 3367
streets 3367
Property of town goes to city,
n. 3, 3036
President of board signs warrant..... 3341
Presumption as to incorporation.....n. 4, 3293
Public place, may preserve,
cl. 6, 3333
Real estate, may purchase, cl. 2, 3333
Receipts and expenditures, form 3323
Records kept by clerk 3324
Revenue, anticipating 3159
Rights and liabilities of, assumed by city .....n. 3, 3036
Seal.....cl. 1, 3333
Self-government, can not abandon .....n. 2, 3043
Sewers, may build..... 3392
proceedings..... 3393

Town (*cont'd*) SEC.
Sidewalks, power over..... 3328
Streets, power over..... 3328
Street commissioners, appointment .....cls. 3, 10, 3333
number.....cls. 3, 10, 3333
Suits against, process, how served .....n. 5, 3301
Suits for penalties ..3347; n. 3, 3309
complaint on ordinance, n. 5, 3347
costs worked out on street .. 3347
docket entry 3347
fines, how enforced..... 3346
how commenced 3347
imprisonment of offenders .. 3347
judgment 3347
payment of judgment..... 3347
pleading..... 3331
trial..... 3347
warrant 3347
where brought.....n. 3, 3347
Surrender of powers .....n. 4, 3106
Survey, may make 3252
lack of, taxes not illegal. n. 6, 3348
Town within a town, there can not be .....n. 4, 3297
Trustees, how elected.....n. 1, 3308
accounts, examine..... 3322
board of health, acts as 4993
election 3309, 3311
meetings.....n. 5, 3313
school trustee serving as,
n. 3, 3313
term of office 3311
Union with city or town..... 3233
Vacation, addition may be 3383
town may be..... 3379
proceedings .....3380 to 3382
Wards..... 3302
redistricting 3303
Warrant for arrest..... 3347
for taxes 3341
Water-pipes extended beyond limits 3110*b*
Work-house, may use 6237

Town building
Incorporation .....3493 to 3497
when accomplished 3498
Powers of..... 3498
Realty, may hold and sell 3499
trustees, may convey to..... 3501
Record of proceedings, to keep, 3500
copies as evidence..... 3500

Township
State can not assume debts of, 198

Traction engine
Negligence in using bridge for crossing stream.....n. 25, 3161
Use of street for illegal 3224*b*
penal offense 3224*d*
whistling 3224*c*

Trains SEC.
Town may control, (R. S. 1881, § 4020)

Transcript
Caption of 3068
Certificate to 3067, 3068

Treasurer (city)
Accounts, keeps 3079
Annual settlement, makes 3093
Assessment by, when 3084
Bond and oath 3095
Bonds, cancels 3080
reports sale of 3118, 3079
sells 3118, 3079
Delinquent taxes, collects, 3085, 3087
Deputies, may have 3043
Disbursements, keeps accounts of 3079
Duties ..... 3079 to 3094
concerning loans 3118
Election of 3043
Fees on tax sales 3094
on precepts 3165
Levy, makes on property, 3085, 3087
Loans, duty concerning 3118
Money of city, keeps at his peril ..... n. 2, 3083
Notice concerning taxes, gives, 3087
of sale of property for taxes, 3089, 3091
Oath 3095
Orders, cancels 3080
cancelled orders, delivers to clerk 3083
receives in payment of taxes, 3080
Omitted property, assesses 3084
Pays city orders 3081
street opening, damages 3182
Receipts, gives for money paid him 3080
accounts of, keeps 3079
Record of street opening collections, keeps 3177
Redemption from tax sale 3092
Registry of cancelled orders .. 3080
Reports delinquent taxes 3087
in large cities ..... n. 1, 3083
receipts and disbursements.. 3083
sale of real estate for taxes.. 3092
sinking fund 3126c
street opening, collection of damages 3178
Sale of personal property for taxes 3085, 3087, 3089, 3090
real estate for taxes 3088, 3091
Settlements, annually makes .. 3093
Signs statement of city indebtedness 3120
Street opening assessment, keeps 3177
tenders damages 3182

Treasurer (city) (*cont'd*) SEC.
Tax certificate and deeds, signs 3094
collects 3087
delinquent, collects 3085, 3087
Unsold tax lands, duty towards, 3094
Vacancy 3050
Warrants, when not to pay, 3079, 3081
when indorses 3081

Treasurer (county)
See Taxation (General).

Treasurer (town)
Accounts of examined by trustees 3322
Bond 3320
Cost of serving process, collects, 3398
Clerk may serve as 3308
Deputy 3043
Duties 3322
Election 3308
Liability for town funds ... n. 2, 3322
Oath 3313
Owner of money collected, n. 2, 3083
Pay 3330
Premiums on bonds, must account for ..... n. 2, 3083
Reports, makes ..... n. 3, 3322
conclusiveness ..... n. 2, 3079
form 3322
published 3323
Settlement 3323
form 3322
Tax warrant 3321

Trees
See Shade-Trees.

Trial
Absence of defendant .... n. 21, 3066
Judgment ..... n. 1, 2, 3067
Mayor may hold 3062
Officer ..... n. 1 to 7, 3101

Trustees of towns
Animals, may restrain 3333
Trustees, appropriations by ... 3339
ashes, regulate disposal of, 3333
auctions, regulate 3333
bonds, may issue 3343
bribery of 2010, 2949, 2051
bridges, may regulate 3367
buildings may remove 3367
by-laws, publication of 3333
cemeteries, may purchase ... 3333
claims, when allowed by, 3340, 3341
numbered and registered .. 3340
commons, may control 3338
dogs, may tax 3333
drunkenness, may punish ... 3333
dwellings, may examine 3353
driving immoderately, may punish 3333

Trustees of towns (*cont'd*) SEC.
election of, manner of 3311
exhibitions may regulate ... 3333
fines, may exact or remit.... 3346
fire, aid to extinguish, compel, 3333
apparatus, provide..... 3333
companies may organize.. 3333
limits, may establish..... 3335
wardens, are..... 3329
works, prohibit 3333
gambling, prohibit, ... 3333
games, regulate 3333
gas light, may tax for..... 3337
grounds, public, may inclose, 3333
gunpowder, storage of..... 3333
highways, power over 3367
houses of ill-fame, regulate.. 3333
intoxication, punish 3333
liquor licenses, may grant, 3333
market-houses, may build.... 3333
markets, may regulate..... 3333
money-borrowing restricted, 3342
nuisances, may abate..... 3333
oath of..... 3313
pay of 3330
peace and good order preserve 3333
peddlers, may regulate 3333
property, may buy and sell, 3333
public, may insure..... 3333
prostitutes, may punish..... 3333
right of way, may grant.... 5041
for improving streets..... 5041
road-labor tax, enforce..... 3367
school-houses, may erect.... 3333
tax for, may levy 3333
seal, may have 3333
sidewalks, have charge of.. 3328
incumbering, prevent 3333
sinking-fund tax, provide... 3342
slaughter-houses, regulate .. 3333
stove-pipes may regulate ... 3333
streams, banks of, regulate.. 3338
street commissioner, appoint 3333
street improvements, superintend..... 3328
streets, have control of..3333, 3367
may light..... 3366
taxes, levy and collect..... 3333
buildings, special for 3345
term of..... 3311
trees, may plant.....3333, 3334
vacancies in..... 3312
vice and immorality, prevent, 3333
wells and pumps, construct, 3333
wharves and landings, build, 3333
whistling by engines, regulate..... 2178

Turnpike
Assessing for street improvement.....cl. 18, n. 7. 3106

Turnpike (*cont'd*) SEC.
City may donate to, 3152, (R. S. 1881, § 5099)
Exercise of eminent domain, n. 1, 66
Town may issue bonds to, (R. S. 1881, § 5099)

Union of city and town
Agreement 3235
publication 3235
City and town may unite..... 3233
Conditions..... 3234
Debts not affected..... 3242
Effect..... 3241
Elections 3236
Name 3239; 3240
Notice of agreement..... 3235
Property 3242
Report of election upon..... 3238
Resolution for 3238
Terms..... 3234
Tickets..... 3237

Unwholesome substance
Removal.....cl. 22, 3106

Vacancies in office
City judge..... 3050
Clerk..... 3050
Councilman 3050; 3050*a*
Mayor ... .3050; 3050*a*
President of board of aldermen, 3060
Term 3050*b*

Vacation of street
See Street, Vacation.

Vaccination
City may require...cl. 35, n. 2, 3106

Vagrants
City may punish, cl. 20, 3106, 3154; n. 4, 3155

Vehicles
Council may regulate use of, cl. 12, 3106; cl. 38, 3106; 3156

Venue
Change of refused by mayor, effect.....n. 12, 3062
Granting 3062

Venire
Form..... 3066

Verdict
Form in street opening proceedings 3180

Viaducts
Railroad compelled to build, cl. 40, n. 3, 3106; n. 28, 3161

Vice
Council prevents.....cl. 6, 7, 3106
Town may suppress.....cl. 6, 3333

Voters SEC.
Number in precinct of town... 3224
Qualifications 84; 3223
Special meetings of in town... 3332
See Elections (General).

Wabash and Erie Canal
Repairing bridges upon..cl. 40, 3106

Wagons
Loading and unloading in street, cl. 18, n. 3, 3106

Walls
Dangerous, city not liable for, n. 31, 3161
Partition.....cl. 41, n. 1, 3106

Wards
Board of town trustees divide city into 3037
number 3037
Courts can not judicially notice, n. 1, 3037
Mandamus to compel division, n. 5, 3037
New ward..... 3038
notice of.....3038*a*
number in large city..... 3052
order for..... 3038
ordinance necessary 3038*a*
petition for..... 3038
size..... 3037
size in large cities.....3052; 3053

Warrant for money
Action upon city warrant..n. 2, 3069
Embezzlement by clerk. ..n. 5, 3068
Form in city..... 3069
How drawn in town.....3349; 3350
in city 3069
Mayor signs 3069
Presiding officer of council signs..... 3079
Register of in city..... 3069
When can not be drawn..... 3069
in large city..... 3123

Warrant for taxes
Form..... 3070

Warrant for arrest
Arrest upon.....n. 4, 7, 3076
Certified to adjoining county, n. 22, 3076
Form..... 3066
How directed .....n. 1, 3066
Penal action requires ....n. 21, 3066

Water
City may procure...cl. 35, n. 2, 3106

Water-course
Course changed..... 3167
vacated 3184

Water-pipes
Laid in street 3110

Water-power company SEC.
City may aid. 3153

Water-works (city)
Appropriation of land..3266 to 3269
Artesian well, city may use, cl. 26, n. 3, 3106
Assessment of damages for, cl. 26, 3106; 3266; 3267
Attachments, city may regulate, 3280
Bonds, issuance of, 3114; 3265; cl. 26, n. 2, 3106
embezzlement, new may issue, 3114; n. 2, 3265; n. 4, 3095
redemption 3283
selling 3114; 3265
tax for 3265; 3283; 3284
Commissioners, appointment...3266
duties of 3266; 3267
oath of..... 3266
report from 3267
appeal from..... 3269
Committee of investigation... 3278
Company may be formed, cl. 26, 3106
stock may be taken in..cl. 26, 3106
Contract for.....3277; 3281
bids for..... 3281
Contractor's bond 3282
Defective supply of water, cl. 26, n. 9, 3106
Election for construction 3265
ballots..... 3265
notice of..... 3265
order..... 3265
petition for 3265
return of 3265
Eminent domain, use of powers of.....n. 16, 66
Erection, as to..... 3265
trustees for 3270
Erection by city...cl. 26, 3106; 3265
Estopped, when abutter is, cl. 26, 3106
General welfare clause authorizes .....n. 6, 3155; n. 10, 3114
Grade of street changed, cl. 26, n. 7, 3106
Jurisdiction of city 3285
Legislation, preliminary, 3114; 3265
Lien of tax 3284
Location of .....cl. 45, 3106; 3265
Monopoly .....cl. 26, n. 8, 3106
Name 3314
Negligence in building, cl. 26, n. 4, 3106; n. 1, 3277
leaking pipes.....cl. 26, n. 6, 3106
scaring horses....cl. 26, n. 9, 3106
Ordinance establishing 3270
Pipes in street, n. 12, 66; cl. 26, n. 7, 3106; 3110
extended beyond city limits, 3110*b*
Pollution, prevention of 3285
Private, incorporation . .n. 1, 5, 3265

Water-works (city) (*cont'd*) SEC.
Protection of 3285
Public use, water free for 3279
Regulations, city may adopt, cl. 26, n. 6. 3106
Realty, may purchase ...cl. 45, 3106
Stream, diverting...cl. 26, n. 3, 3106
Superintendent's bond, cl. 26, n. 3, 3106
Surplus fund, application 3274
Tender of damages, 3268; n. 1, 3272
Town may build ...3265; cl. 3, 3333
Trustees for, as to.....3270 to 3282
abolished in small cities 3270*a*
bond, failure to fix.....n. 1, 3271
by-laws and rules, may make, 3272
compensation 3271
council acts as, in small city, 3270*b*
duties can not be prescribed by council .....n. 1, 3271
election of 3270
investigating, council may, n. 1, 3278
money, how deposits ..3275; 3276
oath 3313
president 3313
reports from 3275
suit, may bring..... 3314
terms..... 3270
vacancies in office 3312
Vote upon construction..... 3265
Water-rents..... 3273
collection..... 3271
Water-works order .....n. 1, 3276

Water-works canal
Use of for water-works, 4203*o* to 4203*s*

Water-works companies
Articles of association 4200
Bonds, when may issue 4202
holders, when may vote 4203
Debts, may assume..... 4201
Franchises of 4201
Money, when may borrow 4202
Mortgages, may give..... 4202
Personalty, where taxed 6357
Private incorporation ..n. 1, 5, 3265
Property, what may hold 4201
Re-capitalization, privileges of, 4201; 4200
release of old subscribers ... 4201
Sinking fund, may establish... 4203
Stock, may issue 4203
city may sell.....cl. 26, n. 2, 3106
preferred 4203

Water-works (town)
Water-works, may construct.. 3265
Bonds, may sell for..... 3265
tax, to pay 3283
lien of 3284
Condemnation for..... 3266

Water-works (town) (*cont'd*) SEC.
assessment of damages..... 3267
appeal from..... 3269
Trustees of, election of 3270
bond of..... 3271
contracts by 3277, 3282
notice of 3281
funds, how kept by.....3275, 3276
application of..... 3274
investigation of..... 3278
manage the works..... 3271
officers, appoint and pay.... 3271
pay of..... 3271
regulations, may make 3272
rents, assess..... 3273
reports by 3275
Water free for public use 3279

Water-works companies in towns
Articles of association, 4202*c*, 4202*b*
Bonds, may issue 4203*h*
Canals, may use 4203*k*
Central canal may be used....4203*k*
Condemnation proceedings ...4203*c*
amendment of proceedings, 4203*e*
appraisers appointed, 4203*c*, 4203*e*
appropriation 4203*b*
new proceedings 4203*f*
survey.....cl. 1, 4203*a*
unknown owners 4203*e*
Consent of town necessary....4203*i*
Donations to .....cl. 2, 3, 4203*a*
Existing company may build, 4203*j*
Highway, use of .....cl. 5, 4203*a*
Interference with work.....4203*g*
Powers 4203*a*
Purchase .....cl. 3, 4203*a*
Railroad, use of right of way, cl. 5, 4203*a*
Repairing .....cl. 6, 4203*a*
Right of way, how acquired...4203*c*
Route, changing .....cl. 8, 4203*a*
Site .....cl. 4, 4203*a*
Surveys for .....cl. 1, 4203*a*
Unknown owners 4203*e*
When may be built 4203*a*

Weighing
City may regulate.....cl. 31, 3106
salary of master .....cl. 31, 3106
spring scales, use of may prohibit.....cl. 31, n. 1, 3106

Welfare of city
Council must guard .....cl. 4, 3106

Welfare clause
General clause for city 3155
for town.....cl. 16, 3333

Wells
Abandonment of .....n. 3, 3107
Appropriation of, when city may make..... .....n. 3, 3170

Wells (*cont'd*) SEC.
Artesian, city may use, cl. 26, n. 23, 3106
Town may construct .....cl. 3, 3333
regulate ....cl. 3, 3333

Wharves in city
City may build..... cl. 34, 3106
Ferriage, charge for use of, cl. 34, n. 2, 3106
Ferry, using..... 3103
Powers of city over, cl. 34, n. 2, 3106
Rates for use may fix ....cl. 34, 3106
lien on boats, for, cl. 34, n. 2, 3106
Repairing..... cl. 34, n. 2, 3106
Runners at, may regulate, cl. 37, 3106
Sewers, assessment of wharf for cost of.... cl. 43, n. 19, 3106

Wharves in towns
Building, may..... cl. 18, 3333
Controlling, may..... 3338

Women
Imprisonment in house for friendless women 6240
School office, may hold..... 4540

Wood
Measuring, city may regulate, cl. 31, 3106
Throwing in street, cl. 18, n. 2, 3106
Sale of, city may regulate, cl. 31, 3106

Wooden buildings
Construction, city may prevent.....cl. 32, 3106
may regulate..... n. 1, 4, 3155
town may prohibit 3335
Removal of by city..... cl. 32, 3106

Work-house SEC.
Cities may send to..... 6232
County commissioners may establish 6227
regulations may make..... 6232
report of superintendent to, 6233
County physician to visit 6236
Discipline enforced 6236
Expenses, how paid 6233
Grand jury must inspect..... 6234
Jailer must transfer to....6230, 6237
Justice of the peace may commit to 6229
Mittimus to 3067, 6229
Municipal, use of..... 6237
Notice of completion..... 6229
Prisoners, punishment of..... 6238
credit on fine for work..... 6239
hard labor, put to 6231
highways, worked on 6231
punishment..... 6238
refusing to work, penalty... 6238
transfer of, from jail.. 6230, 6237
Receipts of money..... 6233
Regulations by county commissioners..... 6230, 6231
Sentence, to 6229
remission, of..... 6229
Sheriff must transfer.... 6230, 6237
Superintendent of..... 6228
arrests may make 6236
bond of..... 6236
duties of..... 6236
reports to commissioners ... 6233
Towns may send to..6232, n. 9, 3347
Transfer from jail.....6230, 6237
Visitation of..... 6235

Working on street
Rate allowed prisoner for, 3067, 6231
Town may require..... 3367

AD19 -

DOBBS BROTHERS
LIBRARY BINDING CO., INC.
ST AUGUSTINE, FLA.

SEP '68

LIBRARY OF CONGRESS
0 021 051 833 2